United States Court of Appeals for the Second Circuit

APPENDIX

77-4046

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United States Court of Appeals

FOR THE SECOND CIRCUIT

THE FLORSHEIM SHOE STORE COMPANY OF PITTSBURGH, PENNSYLVANIA AND THE FLORSHEIM SHOE STORE COMPANY OF MONROEVILLE, PENNSYLVANIA,

Petitioners,

—v.—

NATIONAL LABOR RELATIONS BOARD,

Respondent.

ON PETITION FOR REVIEW AND TO SET ASIDE AND CROSS-APPLICATION FOR ENFORCEMENT OF AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD

JOINT APPENDIX

VOLUME II

Pages 524a - 959a

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JOINT APPENDIX

TABLE OF CONTENTS

Page

Chronological List of Relevant Docket Entries 1a

Stenographic Transcript of Testimony 2a

General Counsel's Exhibits:

Exhibit 1(a) 798a
Exhibit 1(c) 799a
Exhibit 1(e) 800a
Exhibit 1(g) 801a
Exhibit 1(h) 802a
Exhibit 1(n) 810a
Exhibit 1(r) 815a
Exhibit 2 .... 816a
Exhibit 3 .... 817a
Exhibit 4(a) 818a
Exhibit 4(b) 820a
Exhibit 4(c) 822a
Exhibit 5 .... 824a
Exhibit 6 .... 825a
Exhibit 7 .... 826a
Exhibit 8 .... 827a
Exhibit 9 .... 828a
Exhibit 10 .... 829a
Exhibit 11 .... 831a
Exhibit 12 .... 833a
Exhibit 13 .... 834a
Exhibit 14 .... 835a
Exhibit 15 .... 836a
Exhibit 16 .... 839a
Exhibit 17 .... 841a
Exhibit 18 .... 843a
Exhibit 19 .... 845a
Exhibit 20 .... 847a
Exhibit 21 .... 849a
Exhibit 22 .... 851a
Exhibit 23 .... 853a
Exhibit 24 .... 855a
Exhibit 25 .... 857a
Exhibit 26 .... 859a
Exhibit 27 .... 860a
Exhibit 28 .... 862a
Exhibit 29 .... 864a
Exhibit 30 .... 868a
Exhibit 31 .... 869a

Page

Respondents' (i.e. the Company's) Exhibits
Exhibit 5 .... 871a
Exhibit 8 .... 908a
Exhibit 9 .... 911a
Exhibits 10(a) - 10(i) 912a
Exhibit 11(a)................................. 921a
Exhibit 11(b)................................. 922a
Exhibit 12 .... 923a

Decision of the Administrative Law Judge, dated September 22, 1976 .... 924a

Decision and Order of the National Labor Relations Board, dated January 17, 1977 .... 958a

BEFORE THE NATIONAL RELATIONS BOARD

SIXTH REGION

- -

In the Matter of:

THE FLORSHEIM SHOE STORE COMPANY
OF PITTSBURGH, PENNSYLVANIA, AND
THE FLORSHEIM SHOE STORE COMPANY
OF MONROEVILLE, PENNSYLVANIA

and

RETAIL STORE EMPLOYEES UNION LOCAL 1407
as chartered by RETAIL CLERKS INTERNATIONAL
ASSOCIATION, AFL-CIO

Case number
6-CA-8591

- -

National Labor Relations Board,
Hearing Room #1,
Porter Building,
601 Grant Street,
Pittsburgh, Pennsylvania.
March 23, 1976.

Met pursuant to adjournment at 11:00 o'clock a.m.

BEFORE:

HONORABLE JOSEPH I. NACHMAN, ADMINISTRATIVE LAW JUDGE.

APPEARANCES:

MARVIN DICKER, Esq., Proskauer, Rose Goetz & Mendelsohn,
300 Park Avenue, New York,
New York 10022, appearing on
behalf of the Respondent.

E. DONALD LADOV, Esq., 601 Grant Street, 10th Floor,
and
AMY S. KRIEGER, Esq. Porter Building, Pittsburgh,
Pennsylvania, 15219, appearing
as Counsel for the General Counsel.

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INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS	VOIR DIRE
Respondent's:					
LOUIS G. BRIIN	525	580	633	634	540 575
TED SILVERHORN	635	660			
PAUL R. HOLMES	684	710			

EXHIBITS

NUMBERS	FOR IDENTIFICATION	IN EVIDENCE
Respondent's:		
9	530	REJECTED
10(a)	538	546
10(b)	538	548
10(c)	538	550
10(d)	538	551
10(e)	538	552
10(f)	538	553
10(g)	538	554
10(h)	538	690
10(i)	538	691
11(a)	570	REJECTED
11(b)	570	REJECTED
12	574	576
General Counsel's:		
29	587	627
30	682	683

PROCEEDINGS

JUDGE NACHMAN: On the record.

This is a resumed hearing before the National Labor Relations Board in the matter of The Florsheim Shoe Store Company, case number 6-CA-8591, pursuant to adjournment taken on March 4th 1976.

The state of the record is that the General Counsel, when we had adjourned, announced that he was resting his case.

We are ready for the REspondent to proceed.

Call your first witness.

MR. DICKER: First Your Honor, I would like a motion to dismiss all of the 8(a)(3) and 8(a)(5) charges in the complaint, on the grounds that they have not been proven.

JUDGE NACHMAN: That motion will be denied.

MR. DICKER: I would like to call Mr. Lou Brien.

Whereupon,

LOUIS G. BRIEN

was called as a witness by and on behalf of the Respondent and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (by Mr. Dicker) Would you state your full name and your address for the record Mr. Brien?

A Louis G. Brien, 1214 Laurel Avenue, Deerfield, Illino

JUDGE NACHMAN: Is that L E W?

THE WITNESS: Louis, L O U I S.

Q (by Mr. Dicker) Mr. Brien, by whom are you employed?

A The Florsheim Shoe Company.

Q What is your present position?

A I am the National General Manager, of the Florsheim Shoe Shops.

Q Would you tell us what positions you've previously had with the Florsheim Shoe Company?

A Prior to that I was General Manager of the --

Q Let's start at the beginning of your career.

A At the beginning?

Q Yes.

A I was originally hired, while I was going to college, as a bookkeeper. I have been a Store Manager. I have been a Supervisor.

Q Did there come -- were you originally hired in Chicago?

A Yes.

Q Did there come a time when your job was changed from Chicago to a different location?

A Yes. I was a Store Manager in Chicago, and I was transferred to San Francisco as a General Manager.

Q How much notice did you have when you were transferred from Chicago to San Francisco?

A. From the time I received the notice in Chicago until I reported to San Francisco, less than a week.

Q Did there come a time when you were transferred From San Francisco to a different location?

A I was transferred back to Chicago.

Q How much notice did you have from the time -- how much notice did you have of the transfer from San Francisco to Chicago?

A I received notice on a Friday, and I was on the job on Monday.

Q Notice on Friday in San Francisco and on the job on Monday?

A No, I received notice in Chicago, and my new job was the Supervisor of the West Coast. I went back out to California and started a supervisory job on Monday.

Q Did there come a time when you were transferred again?

A Yes. I was transferred to New York.

Q How much notice were you given at the time of your transfer to New York?

A From the time I received the notice and reported to New York, three days.

Q Then you were subsequently transferred from New York back to Chicago?

A Yes I was.

Q How much notice did you receive then?

A I came into Chicago, I was notified of the job change that morning, and that afternoon I was performing my functions in Chicago.

JUDGE NACHMAN: Did these job changes come as a complete surprise to you, or had they been in the works for some while?

THE WITNESS: Nothing definite. I had a --

JUDGE NACHMAN: Things were in the works, you just didn't know when they would materialize?

THE WITNESS: Well, I didn't know if the job would materialize or when it would materialize.

Q (by Mr. Dicker) They weren't definite at the time?

A No.

Q Until you actually received formal notice?

A At the time I went to discuss the jobs, they were not definite.

Q Now Mr. Brien, do you have any responsibility with respect to transfers of employees from one location to another?

A Yes.

Q Could you tell us, to the best of your knowledge, what the general, in the company, what the general time lag is?

A The policy of the company is to transfer the people as quickly as possible after they've been notified. We usually, in some instances we go from twenty-four hours to a week. We do not like to drag it out any longer than that.

Q Now Mr. Brien, your responsibility is General Manager, and how long have you had that job?

A Seven years.

Q Over what -- how many stores are under your jurisdiction?

A Approximately three hundred.

Q Throughout the entire West -- throughout the entire Country?

A Yes.

Q That includes the stores located in Pittsburgh?

A Yes sir.

Q Mr. Brien, did there come a time when your attention was called to a particular problem in Pittsburgh?

A Yes, in late --

Q When was that?

A In late 1974, we noticed that we had a deteriorating condition in the Philadelphia -- or excuse me, the Pittsburgh stores. The sales performance and profit performance for 1974 was poor, and way below National average.

JUDGE NACHMAN: What do you mean late '74?

THE WITNESS: November, December sir.

MR. DICKER: Mark this as Respondent's Exhibit 9 for identification.

JUDGE NACHMAN: That will be R-9.

(The document above-referred to was marked Respondent's Exhibit No. 9 for identification.)

Q (by Mr. Dicker) Can you identify the document I've just handed you Mr. Brien, R-9 for identification?

A This shows our --

Q What is that?

A Excuse me?

Q What is that document?

A This is a sales comparison for the Pittsburgh Portion of Florsheim Shoes, showing the 1973 volume and the 1974 volume.

Q The numbers next to '73 and '74 are from where? Where are they taken?

A Company records.

Q Company records that the company keeps in the ordinary course of business?

A Yes.

Q The calculations below are arithmetic calculations?

A Yes they are.

Q Is this an accurate reflection of the sales figures for Pittsburgh for '73 and '74?

A. Yes it is.

MR. DICKER: I would like to offer Respondent's Exhibit 9.

MR. LADOV: I object strenuously Your Honor. I would like some --

JUDGE NACHMAN: The objection is sustained. The books are the best evidence.

MR. DICKER: Your Honor, we could bring in more books if that's --

JUDGE NACHMAN: I don't care if you have to bring in a railroad train, the books are the best evidence.

MR. DICKER: Mr. Brien --

JUDGE NACHMAN: Now you can do this, if you want to do this, if you gentlemen can work out some kind of an arrangement, if you could make the books available to Counsel for the General Counsel so that he can examine them and satisfy himself to see that the figures are accurate, and have it here for his use in cross examination, fine. The summary is very useless.

MR. DICKER: May we go off the record?

JUDGE NACHMAN: Off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

The objection to this exhibit is sustained. This will go into the rejected file as Rejected Exhibit 2.

MR. DICKER: Your Honor, we will offer to supply before the conclusion of the hearing the records. I don't understand why copies of the records are not adequate.

JUDGE NACHMAN: The trouble is that you haven't got copies of the records. You've gottan a resume, or somebody's resume.

MR. DICKER: We will supply copies of these records Your Honor, and we can do that today.

JUDGE NACHMAN: All right.

MR. LADOV: I certainly would like to have someone available for voir dire as to these records.

MR. DICKER: We will have Mr. Brien available.

MR. LADOV: Mr. Brien obviously did not fill out the records, or make the records and compile the records with the Pittsburgh area stores.

JUDGE NACHMAN: Let's not argue.

The objection has been sustained. Proceed from there.

MR. DICKER: That will be a rejected exhibit?

JUDGE NACHMAN: That is rejected too. R-9 becomes rejected.

Q (by Mr. Dicker) Mr. Brien, in the course of your -- you said that certain facts came to your attention at the end of 1974?

A Yes. There was a deterioration of sales and performance

MR. LADOV: Objection Your Honor on the best evidence rule.

JUDGE NACHMAN: Well, I will let the witness say what his conclusion was. It will not have much weight in the way of supporting the evidence.

MR. LADOV: All right.

Q (by Mr. Dicker) What did you learn Mr. Brien?

A That there was a deterioration on the performance of the Pittsburgh stores.

Q What do you mean deterioration?

A They decreased in sales profits.

JUDGE NACHMAN: Well, was it sales or profits or both?

THE WITNESS: Both.

Q (by Mr. Dicker) What, if anything, did you do about that Mr. Brien?

A As in the normal course of the situation, I had several meetings with my supervisor, who was Mr. Silverhorn, and we discussed the matter of the Pittsburgh stores.

We reviewed the situation as to the location of physical composure of the stores, and to the merchandising and the personnel.

Q After that review, did you come to any conclusions?

MR. LADOV: Objection Your Honor. He's been leading the witness right along.

JUDGE NACHMAN: He is not leading, he asked him if he came to a conclusion. He may answer yes or not.

THE WITNESS: Yes we did. We found out that the merchandising in the stores were proper, and that the --

JUDGE NACHMAN: What do you mean by merchandising?

THE WITNESS: The styles of shoes that we carried were proper, and that through the best of our feeling, that the main reason -- the major reason for our deterioration was the composition of the help.

Q (by Mr. Dicker) What, if anything, did you do about that Mr. Brien?

A To that end, we reviewed the personnel.

JUDGE NACHMAN: Who is we?

Q (by Mr. Dicker) Who is we?

A Mr. Silverhorn and myself, and at times, Mr. Holmes. We reviewed --

JUDGE NACHMAN: Who is Mr. Holmes?

THE WITNESS: Mr. Holmes is my administrative assistant Mr. Silverhorn was the supervisor of the stores.

We reviewed the composition of the help and we found out that the sales forces was made up of approximately two-thirds part time people.

JUDGE NACHMAN: When did you reach this conclusion?

THE WITNESS: This was in either December of 1974 or January of 1975. At that time, after we had extensive meetings on this, numerous meetings, we decided to change the composition of the sales help and go to full time people.

Q (by Mr. Dicker) Why did you make that decision?

A The reason being is that we get better productivity and better results with full time people. Part time --

MR. LADOV: Objection Your Honor. It's clearly an opinion.

MR. DICKER: It is his opinion.

JUDGE NACHMAN: It's an opinion of his operation, so he is entitled to give us that.

MR. LADOV: All right.

THE WITNESS: We found that full time people are more productive than part time people, since it is a career. It is not a passing or a portion of their income. It is the major source of their income. They are better informed -- full time people are better informed than part time people as to styles and sales techniques.

The major part -- the major problem that we have with part time people is that they are weaker salesmen for the most part than full time people, since they work evenings and on Saturdays, we match up our weakest salesmen and our most productive periods of sales times.

We also have dress codes that we have problems with.

JUDGE NACHMAN: How long has the method of operating with part time help in the Pittsburgh stores been going on?

THE WITNESS: I would say for several years.

JUDGE NACHMAN: Well, could you be more definite than that? As long as ten years?

THE WITNESS: Possibly, I have never examined the records in that respect.

JUDGE NACHMAN: Well, to your knowledge how long?

THE WITNESS: To my knowledge, about six years.

Q (by Mr. Dicker) Mr. Brien, let me ask you one question I may have asked you before. You said that you -- strike that.

You said that you saw that the -- strike that.

You indicated in your testimony that there was a decline in the sales in Pittsburgh in 1973 to 1974. Is that right?

A Yes.

Q Do you have any recollection of what the percentage of the decline was?

A Based on the information we put together was between--

MR. LADOV: Objectinn Your Honor, best evidence.

THE WITNESS: Between 1973 and 1974?

MR. DICKER: Yes.

JUDGE NACHMAN: Overruled, I'll let him answer the question.

THE WITNESS: There was a six tenths of a percent of an increase.

JUDGE NACHMAN: Do you remember the dollar figure?

THE WITNESS: It's on that exhibit sir. I don't have it.

MR. LADOV: Objection Your Honor.

JUDGE NACHMAN: Well, do you remember the dollar figure?

THE WITNESS: About a million four, in 1974, to approximately a million three, in1973.

JUDGE NACHMAN: Approximately a hundred thousand dollars?

THE WITNESS: Yes sir.

JUDGE NACHMAN: Well, the greater figure was in '74?

THE WITNESS: Yes sir.

Q (by Mr. Dicker) Do you know what the National increase was in that same period?

A Over eight percent.

Q Mr. Brien, do you review sales figures regularly?

A Yes we do.

Q Is it a part of your job to review sales figures?

A Yes sir.

Q Did you review the sales figures that were on the rejected exhibit 9 before the exhibit was prepared?

A Yes.

Q To the best of your knowledge, are they accurate?

A Yes.

MR. LADOV: Objection. Objection Your Honor.

JUDGE NACHMAN: Well, the objection to that question is overruled.

Q (by Mr. Dicker) Mr. Brien, what,if anything, did you do after you made this review of the sales, the staffing in the stores and the merchandising of the stores?

A I had meetings with Mr. Silverhorn during January and February and part of March. They were almost weekly. We reviewed the weekly payroll registers. I told him each time to reduce the part time help, and in some instances, I told him to eliminate the part time help.

Q Did you make any -- consult with Mr. Silverhorn in January, February or March?

A Verbally and meetings.

Q Did you issue any written memos to that effect?

A I gave him my notations on the payroll registers.

MR. DICKER: Would you mark this Respondent's Exhibits 10(a), (b),(c), (d), (e), (f), (g), (h), (i) for identification.

(The documents above-referred to
were marked as Respondent's Exhibits
Nos. 10(a) thru 10(i) for identification.)

JUDGE NACHMAN: That's 10(a) thru (i)?

MR. DICKER: Yes Your Honor.

Q (by Mr. Dicker) I show you what's been marked as exhibits 10(a) thru 10(i) for identification, can you identify those Mr. Brien?

A These are copies of our payroll register for various dates and various stores in the Pittsburgh area.

Q That's copies of company records?

A Yes it is.

JUDGE NACHMAN: This is a copy of your payroll register?

THE WITNESS: Yes sir. You see up on top it says the Florsheim Retail Division, and underneath in smaller print, Payroll Register. This shows the hours worked, the computation of a person's salary and his sales.

Q (by Mr. Dicker) Now with respect to 10(a) Mr. Brien, the words eliminate one part time salesman?

A Yes.

Q Whose handwriting is that?

A That's my handwriting.

Q What did you do with that after you wrote that on it?

A This was passed along to Mr. Silverhorn.

Q What store does that refer to?

A This is the payroll of 1/9/75, and it's the South

Hills Village Store.

Q In Pittsburgh?

A. In Pittsburgh.

MR. DICKER: I offer 10(a).

MR. LADOV: Voir Dire Your Honor, may I?

JUDGE NACHMAN: Just one moment.

When did you put this notation eliminate one p.t. salesman?

THE WITNESS: It would have been a day or so after January 9th.

JUDGE NACHMAN: All right. You may Voir Dire.

VOIR DIRE EXAMINATION

Q (by Mr. Ladov) Mr. Brien, did you prepare the payroll register? This payroll register?

A. Did I personally sir?

Q Yes.

A. No. This was computed by our payrolldepartment.

Q Where?

A. In Chicago.

Q Where did they get the figures to compute this?

A. They get sales slips from the South Hills Village Store, and the computation is made from those sales slips, also an hours log.

JUDGE NACHMAN: Is this kept on a computor?

THE WITNESS: Yes sir.

JUDGE NACHMAN: Is this a computor print out?

THE WITNESS: Yes sir.

Q (by Mr. Ladov) When is this exhibit -- what is the number of the exhibit please?

MR. DICKER: 10(a).

Q (by Mr. Ladov) When did you first -- what are these figures for on 10(a), on exhibit 10(a)?

A. 10(a), this is the base salary for our payroll week ending 1/9/75. It is the commissions being paid and the sales for the payroll week ending 1/2/75. It is marked up in the right hand corner.

Q I show you Mr. Brien, there is a circle in the third column of numbers. There is a circle around the number 40, under hours regular, 40 for the name Michael J. Kelly. What is that sir? Did you put that circle there?

A. Yes.

Q What does it represent?

A. I was drawing to attention to the fact, if you'll notice to the right, there is a relationship between the 76 22, I was snowing that Mr. Kelly, and this is one of the discussions we had regarding this sheet, the fact that the floor was overstaffed and Mr. Kelly worked forty hours and only earned $76.00 and this was the relationship that I was trying -- when I was discussing this.

Q Are you initials on this sheet anywhere?

A No sir.

Q Is the date on which you read this sheet, or saw this sheet, anywhere?

A No sir.

Q What is the date that you contend you saw this sheet?

A A day or so after.

Q After what?

A After January 9th.

Q Do you contend that the first time you saw this sheet is that when you wrote to eliminate one p.t. salesman?

A Yes sir.

Q Then what did you do with this sheet?

A I gave it to Mr. Silverhorn.

Q What day did you give it to Mr. Silverhorn?

A The same day that I wrote on it.

Q What date is that?

A It would have been the 10th or 11th, sir of January.

Q Are these sales for the week ending January 9th, all this information is computed and shipped to you from Pittsburgh, and shipped to you In Chicago one day after the close of it, the period. Is that what you're saying this reflects?

A No. I'm saying that this reflects the sales, the commissions on the sales for the week ending January 2nd. Everyday the store takes the sales slips --

JUDGE NACHMAN: The week ending January 2nd or January 9th?

THE WITNESS: No. The commissions for the sales made January 2nd. We lag one week onthe commissions. The base salary is paid current, the commissions lag one week.

JUDGE NACHMAN: So that exhibit 10(a), as far as it refers to base salary is the week ending January 9th?

THE WITNESS: Yes sir.

JUDGE NACHMAN: The purpose of the commissions is the week ending January 2?

THE WITNESS: Yes sir, and that's noted up in the right hand corner.

JUDGE NACHMAN: All right.

THE WITNESS: To explain to you sir the -- each day the store submits the previous days, or the current days, sales tickets toour sales department in Chicago, who in turn edit and balance the sales tickets, and that information is then given to the payroll department, accumulated for the week, and for the purpose of producing a payroll.

JUDGE NACHMAN: Well, how long after January 9 would you normally see this document?

THE WITNESS: At least a day or two after January 9th.

JUDGE NACHMAN: You would see it within one or two days, is that right?

THE WITNESS: Yes sir. Yes sir because --

JUDGE NACHMAN: January 9th represents -- what is that? A Saturday?

THE WITNESS: That's a Thursday.

JUDGE NACHMAN: You would see it before the end of that week?

THE WITNESS: Yes sir.

I would either receive it on the -- in this case, I always receive it before the end of the week, because even though the base salary is paid through the 9th, these are generally completed on a Tuesday or a Wednesday, since the payroll checks have to be mailed from Chicago in time to be received on the 9th to the stores.

Q (by Mr. Ladov) Mr. Brien, in pointing -- let the record show I am pointing to what look likes some numbers on the lower right hand side of this chart. Would you read those numbers?

A $80.00, 76.22, a line drawn and 3.78 underneath.

Q What is the significance? Did you put those numbers there?

A No.

Q Do you know what those numbers are?

MR. DICKER: Objection. This is Voir Dire.

MR. LADOV: I am trying to find out --

JUDGE NACHMAN: This is a Voir Dire question.

MR. DICKER: We are not putting the document in for thepurpose of those numbers Your Honor.

JUDGE NACHMAN: You say the numbers on the exhibit have no relevance as far as the exhibit?

MR. DICKER: Yes Your Honor.

Q (by Mr. Ladov) Two other things Mr. Brien. The scribble underneath where is Florsheim Shoe Shop, South Hills Village, is that your writing?

A No sir.

Q You have no idea what that is, over here on the right hand side of it?

A These are reviewed downstairs.

Q I'm sorry. Just the pencil mark or the mark?

A This is reviewed by Mr. John Morgage before coming up to me. That is his mark.

MR. LADOV: That's all the questions on Voir Dire Your Honor.

END OF VOIR DIRE EXAMINATION

JUDGE NACHMAN: All right. The exhibit has been offered, is there any objection?

MR. LADOV: No objection Your Honor.

JUDGE NACHMAN: The exhibit Respondent's 10(a) will be received.

(The document heretofore marked as Respondent's Exhibit No. 10(a) was received in evidence.)

JUDGE NACHMAN: On exhibit 10(a), on the basis of this document 10(a), did you reach a decision that anyone should be laid off or terminated?

THE WITNESS: On the basis of reading this, at the time I marked this, I put down eliminate one part time salesman. It was my intent, at that time, to lay off one part time salesman.

JUDGE NACHMAN: Did you give any directions as to who that should be ?

THE WITNESS: It's not written here, but it would have been the last part time salesman hired by seniority.

JUDGE NACHMAN: Can you tell from this exhibitwho that might be?

THE WITNESS: No sir.

JUDGE NACHMAN: Could you tell from this exhibit when that person was eitherlaid off or hours reduced or terminated, or whatever happened to him?

THE WITNESS: Not from this exhibit sir.

JUDGE NACHMAN: All right. Go ahead sir.

Q (by Mr. Dicker) Mr. Brien, let me show you now the exhibit 10(b), and ask you if you can tell us what that is?

A This is a copy of the payroll register, for the

South Hills Village Store, and I believe it's 1/30, this was for 1/30/75.

JUDGE NACHMAN: My copy shows very clearly the legend 1/30/75.

Q (by Mr. Dicker) Approximately when did you see that Mr. Brien?

A A day or two after 1/30/75.

Q Whose handwriting is that on there?

A I have written down there eliminate one part time man.

Q To whom was this given?

A Mr. Silverhorn.

Q Do these numbers over here in the middle have any significance for this purpose?

A Not for these purposes, no.

MR. DICKER: I offer 10(b).

MR. LADOV: Your Honor, I object to 10(b) and to all these exhibits as to the truth of the matter, especially the writing and the truth of that, but --

JUDGE NACHMAN: Well, you've just conceded, you had no objection to 10(a). It's been received. Now I want to know, do you have any objection to 10(b)?

MR. LADOV: I object to 10(b) as to the truth of the matter asserted, but as to the writing that is written, at this time yes.

JUDGE NACHMAN: Well, now the truth of the matteris another question, but admissibility is one thing, its value as evidence is another thing.

I want to know if you have any objection to the admissibility of the document?

MR. LADOV: No objection Your HOnor.

JUDGE NACHMAN: All right. 10(b) will be received.

(The document heretofore marked as Respondent's Exhibit No. 10(b) was received in evidence.)

Q (by Mr. Dicker) Take a look at the next document, 10(c).

JUDGE NACHMAN: Before we go on, I would like to ask you again, when you make a notation to eliminate one p.t. man, did you indicate who that might be?

THE WITNESS: No sir.

Q (by Mr. Dicker) What does p.t. stand for Mr. Brien?

A Part time.

Q Go to the next one, 10(c), can you identify that?

A 10(c) is a copy of the payroll register for the pay period ending 1/30/75 for the Northway Center Store in Pittsburgh.

Q For what period?

A For the pay period 1/30/75, January 30th.

Q When did you see that document?

A A day or two after the day shown on it.

Q Whose handwritingis that, eliminate one p.t. man?

A That is my handwriting.

Q When did you write that on there?

A At the time I saw it. The first time I saw it, 1/30 or a day or two after.

Q Do these numbers have any significance?

A No sir.

MR. LADOV: Which numbers are you referring to?

JUDGE NACHMAN: The handwritten numbers.

MR. DICKER: The handwritten numbers on the document.

JUDGE NACHMAN: The exhibit is -- those figures are not a part of the exhibit.

MR. DICKER: That's right your Honor.

JUDGE NACHMAN: All right.

Q (by Mr. Dicker) Did you give -- what did you do with this document after you wrote on it Mr. Brien?

A I gave it to Mr. Silverhorn.

MR. DICKER: I offer 10(c).

JUDGE NACHMAN: Any objection?

MR. LADOV: No objection.

JUDGE NACHMAN: Again, did you indicate who that one p.t. man should be, part time man?

THE WITNESS: No sir.

JUDGE NACHMAN: You have no knowledge as to -- if any action was taken, or if so, what it was?

THE WITNESS: Not from this document sir.

JUDGE NACHMAN: All right. 10(c) will be received.

(The document heretofore marked as Respondent's Exhibit No. 10(c) was received in evidence.)

Q (by Mr. Dicker) Mr. Brien, take a look at the document exhibit -- for identification 10(d), and I ask you whether you can identify that?

A This is a copy of the payroll register for the period 2/13/75 for the 501 Smithfield Store in Pittsburgh.

Q When didyou see that document?

A A day or two after February 13th.

Q Whose handwriting is that on the document?

A That is my handwriting, it says reduce p.t. help.

Q What does p.t. mean?

A Part time.

Q What, if anything, did you do with that document after you wrote reduce p.t. help?

A Gave it to Mr. Silverhorn.

Q About when would that have been?

A The same day I wrote this.

Q Which would have been about when?

A A day or two after February 13th.

MR. DICKER: I offer 10(d).

JUDGE NACHMAN: Any objection?

MR. LADOV: No objection.

JUDGE NACHMAN: You said no objection?

MR. LADOV: No objection.

JUDGE NACHMAN: 10(d) will be received.

(The document heretofore marked as Respondent's Exhibit No. 10(d) was received in evidence.)

Q (by Mr. Dicker) I show you 10(a) for identification, and I ask you whether you can identify that document?

A It's a copy of the payroll register for the pay period 2/13/75 for the Monroeville Mall Store.

Q When did you receive that document?

A A day or two after February 13.

Q Whose handwriting is written, reduce p.t.?

A That is my handwriting.

Q What does p.t. mean?

A Part time.

Q When did you write reduce p.t. on that?

A A day or two after February 13.

Q What, if anything, did you do with that document?

A I gave it to Mr. Silverhorn.

JUDGE NACHMAN: What action he took on it, I take it you don't know?

MR. DICKER: We'll come to that Your Honor.

JUDGE NACHMAN: I just want to know here from the witness.

THE WITNESS: Not from this document Your Honor.

MR. DICKER: I offer 10(e).

JUDGE NACHMAN: Any objection?

MR. LADOV: No objection.

JUDGE NACHMAN: 10(e) will be received.

(The document heretofore marked as Respondent's Exhibit No. 10(e) was received in evidence.)

Q (by Mr. Dicker) I show you 10(f) and ask you whether you can identify that?

A This is a copy of the payroll register for 2/13/75 at the Northway Center Store in Pittsburgh.

Q What -- when did you receive that?

A A day or two after February 13.

Q Whose handwriting of the letters are on there? The handwriting?

A That's my handwriting, which says eliminate two p.t. men.

Q What does p.t. mean?

A Part time.

MR. DICKER: The numbers on this document -- the handwritten numbers onthis document have no significance, and are not a part of the exhibit.

Q (by Mr. Dicker) Mr. Brien, when did you write eliminate two part time men on it? Two p.t. men on that document?

A A day or two after February 13th.

Q What, if anything, did you do with it?

A I gave it to Mr. Silverhorn.

MR. DICKER: I offer 10(f).

JUDGE NACHMAN: Any objection?

MR. LADOV: No objection.

JUDGE NACHMAN: 10(f) will be received.

(The document heretofore marked as Respondent's Exhibit No. 10(f) was received in evidance.)

Q (by Mr. Dicker) I show you 10(g) for identification, and I ask you whether you can identify it?

A This is a copy of the payroll register for the pay period 2/13/75 for the South Hills Village Store.

Q When did you receive that document?

A A day or two after February 13th.

Q The handwriting on the left, whose handwriting is that?

A That is my handwriting, it says eliminate two p.t. men.

Q P.T. meaning part time?

A Part time, yes sir.

Q The otherhandwriting and numbers on the exhibit Your Honor, have no significance for this matter.

JUDGE NACHMAN: They arenot a part of the exhibit?

MR. DICKER: Not a part of the exhibit.

Q (by Mr. Dicker) Mr. Brien, what, if anything, did you do with that document?

A I gave this document to Mr. Silverhorn.

Q And again, can you say when you wrote eliminate two p.t. men on it?

A A day or two after February 13th.

MR. DICKER: I offer 10(g).

JUDGE NACHMAN: Any objection?

MR. LADOV: The handwriting is not in?

MR. DICKER: No.

MR. LADOV: No objection.

JUDGE NACHMAN: It is not a part of the exhibit.

MR. LADOV: No objection Your Honor.

JUDGE NACHMAN: 10(g) is received.

(The document heretofore marked as Respondent's Exhibit No. 10(g) was received in evidence.)

Q (by Mr. Dicker) Mr. Brien, can you identify 10(h)?

A This is a copy of the payroll register, dated March 13th 1975 for the South Hills Village Store.

Q Is the word reduce, is that in your handwriting?

A No it is not.

Q Do you know whose it is?

A Mr. Paul Holmes.

Q I show you 10(i) --

JUDGE NACHMAN: I take it again that the handwritten numerals on this exhibit is not a part of the exhibit?

MR. DICKER: Not a part of the exhibit.

We will put this exhibit in through Mr. Holmes Your Honor. We won't offer it now.

JUDGE NACHMAN: You are not offering 10(h) at this time?

MR. DICKER: Unless it is more convenient. Mr. Holmes will testify. It is not Mr. Brien's handwriting, it's not the witness' handwriting. We'll have him -- excuse me.

Q (by Mr. Dicker) Did Mr. Holmes write that in your presence? The word reduce?

A No sir. He did not.

Q 10(i), can you identify that?

A This is a copy of the payroll register for the pay period April 3, 1975 for the 200 Fifth Avenue Store.

Q The handwriting on the left, is that your handwriting Mr. Brien?

A No. That's Mr. Holmes' handwriting.

Q Did he write that in your presence?

A No.

JUDGE NACHMAN: The numerals with the circle around them are not a part of the exhibit?

MR. DICKER: Are not part of the exhibit.

JUDGE NACHMAN: You are not offering it at this point?

MR. DICKER: No. We will offer (h) and (i) in Mr. Holmes' testimony -- when Mr. Holmes testifies.

JUDGE NACHMAN: All right.

Q (by Mr. Dicker) Now Mr. Brien, I think you testified that in January, February or March of '75, you spoke to Mr. Silverhorn concerning the part time situation in Pittsburgh?

A Yes I did.

Q Did you say how many times you spoke to him?

A Numerous times, almost weekly.

Q Mr. Silverhorn report back to you as to what, if anything, was being done in Pittsburgh?

A Mr. Silverhorn reported back that he had discussed the situation with Mr. Levine in Pittsburgh.

JUDGE NACHMAN: Who is Mr. Levine?

THE WITNESS: Mr. Levine is the General Manager of the Pittsburgh Stores.

That he had discussed this matter with Mr. Levine. He had past along the company's request that we change the composition of the sales help. Mr. Levine did very little --

MR. LADOV: Objection Your Honor.

JUDGE NACHMAN: Well, he can say what reports he received.

MR. LADOV: That doesn't go to --

JUDGE NACHMAN: It's not for the truth of the matter, it's a fact.

MR. DICKER: Just that he received that report.

MR. LADOV: Fine.

JUDGE NACHMAN: Go ahead sir.

THE WITNESS: Mr. Levine reported back with numerous types of excuses, the main one being that he could not find full time help to hire into the stores. Therefore, the composition of our sales force could not change.

Q (by Mr. Dicker) What did you do, if anything, at that time?

A I was persistent in that I wanted the part time people reduced and eliminated. Again, I had numerous meetings with these people. I did not contact Mr. --

JUDGE NACHMAN: You say these people, what people?

THE WITNESS: With Mr. Silverhorn and on occasion Mr. Holmes. I did not contact Mr. Levine directly, I was working through Mr. Silverhorn and I kept reissuing the orders that these changes should be made.

JUDGE NACHMAN: When did you get this report from Mr. Silverhorn that Mr. Levine was dragging his feet?

THE WITNESS: Periodically sir. It would be every couple -- every couple weeks or --

JUDGE NACHMAN: When? Beginning when?

THE WITNESS: Beginning in January. I received the same type of information that Mr. Levine was dragging his feet. He was not doing it. He was -- I would receive word, at times, well, he's trying to hire people, and I'd check back and a couple weeks later and he has not been able to hire any full time people. This was the type of --

JUDGE NACHMAN: You kept receiving these reports every two weeks or so over what period of time?

THE WITNESS: Three to four months, through April, a part of April.

They would not -- some of the reports -- sometimes the reports were he's got a lead on a full time man, somewhat encouraging, but the end result was never there.

JUDGE NACHMAN: He never gave you any reports after April?

THE WITNESS: I didn't ask for any reports after April.

JUDGE NACHMAN: You never received any?

THE WITNESS: I never received any, no.

Q (by Mr. Dicker) After April, what happened that you didn't receive any reports after April? Were the Pittsburgh sales up?

A Pittsburgh sales were up by --

MR. LADOV: Objection Your Honor. He is leading his witness.

Q (by Mr. Dicker) What happened in Pittsburgh --

JUDGE NACHMAN: It's a very leading question, besides that I think the record would be the best evidence.

Q (by Mr. Dicker) Mr. Brien, did there come a time when -- strike that.

You said that you received these periodic reports from Mr. Silverhorn through April?

A Yes.

Q What happened in April to change that?

A I took an extensive trip to the West Coast. I was not available in the office.

Q You were not physically in the office during April?

A Most of April I was on the West Coast.

Q Then what about in May?

A In May I was concerned with the bargaining negotiations of the New York and Philadelphia contract.

Q You received no reports in April or May?

A I was not searching any out and they did not offer any to me.

Q You were in the West Coast in May--in April, and New York negotiations in May, and what about June?

A June, we had a strike in New York City. I was physically in New York for approximately the last week in May through the entire month of June.

JUDGE NACHMAN: You were in touch with the office during that time weren't you?

THE WITNESS: I was in touch with the office sir, but I never did get to talk about the Pittsburgh situation.

Q (by Mr. Dicker) How many stores are in New York and in Philadelphia, approximately?

A. Approximately thirty stores.

JUDGE NACHMAN: In each place, or in the two combined?

THE WITNESS: In total.

Q (by Mr. Dicker) You're responsible you said for three hundred stores?

A. Yes.

Q The strike in New York was over at the end of June?

A. It was over --

JUDGE NACHMAN: You are leading the witness.

THE WITNESS: It was the last three weeks of JUne, the first three weeks of June.

Q (by Mr. Dicker) Then what happened?

A. I remained most of the fourth week in June, I was back in my office for the month of July.

Q Did you receive any reports about the Pittsburgh situation in July?

A. Not to my recollection. I could have, but I don't recall receiving any. I had a tremendous work load in July, and I know actively I did not solicit any reports on the Pittsburgh situation.

Q What happened in August Mr. Brien?

A The first two weeks in August I took a vacation.

Q Well deserved, and then?

A I came back approximately the middle of August. One of the follow-ups that I had on my calandar was the Pittsburgh situation.

MR. LADOV: Objection Your Honor.

Is he referring to written material?

JUDGE NACHMAN: Over ruled. This is one of the follow-ups he had on his calendar. I suppose he had a note on his calendar calling it to his attention.

Q (by Mr. Dicker) This was the middle of August?

A Middle of August. I then called Mr. Silverhorn into my office. I asked him for a report on the Pittsburgh situation.

JUDGE NACHMAN: What aspects of the Pittsburgh situation?

THE WITNESS: As to what had been done with -- concerning the elimination and replacement of the part time help.

Mr. Silverhorn told me that nothing had been done. That it still had the same composition of part time versus full time help in Pittsburgh.

It was at that time I told Mr. Silverhorn and he and Mr. Levine should forget about it, that I was going to handle it personally, and see that it was accomplished as quickly as possible.

Q (by Mr. Dicker) Did you give Mr. Silverhorn any other instructions?

A I told Mr. Silverhorn to so inform Mr. Levine.

Q Inform Mr. Levine what?

A That I was going to handle this matter myself.

Q What, if anything, did you do after that?

A Mr. Silverhorn, Mr. Holmes and myself had a meeting. I then --

JUDGE NACHMAN: When, where and when?

THE WITNESS: In my office, during approximately the third week of August.

JUDGE NACHMAN: In your office in Chicago?

THE WITNESS: My office in Chicago.

We had a meeting, I was trying to determine what would be the best source of manpower to bring into Pittsburgh, since repeatedly I had been told that we could not hire full time salesmen in Pittsburgh.

I instructed Mr. Holmes to find out if there were any full time salesmen available from our training class in Chicago, and from several other cities around the periphery of Pittsburgh.

In addition to that, I personally called Mr. Saphira, who is the General Manager of New York, and Mr. Crump, who is the General Manager of Philadelphia, and asked them if they had any full time salesmen who would relocate.

At that time I did not tell them where they would relocate, nor did I ask for names. I just wanted to know if they had people who would do this for the company.

Q (by Mr. Dicker) Mr. Brien, have you ever done something similar to that elsewhere in the Country?

A Yes we have.

Q Can you tell us about that?

A Just recently, in November and December, we've done this in Atlanta.

JUDGE NACHMAN: December of 1975?

THE WITNESS: November, December of 1975.

We have reduced part time people, and the results have been great improvement in theoperation of the stores, with increases in sales.

MR. LADOV: Objection Your Honor.

He can, if he wants to testify from the records, bring the records in.

JUDGE NACHMAN: I will take the testimony.

MR. DICKER: Your Honor, this man is responsible for knowing what three hundred stores are doing. He has the knowledge of what they're doing.

JUDGE NACHMAN: I understand that he is, but Counsel has to cross examine the witness, and if the records were brought in they may show something completely different. I don't know. That's up to Counsel.

MR. DICKER: If Counsel wants to subpoena the records, they can subpoena the records. They are under the same problems that I had on direct.

JUDGE NACHMAN: I am going to receive the testimony, but I am putting you on notice that I do so with quite some susceptibility as to its value.

Q (by MR. Dicker) Go ahead Mr. Brien?

A We've done this in other areas of the Country. We've done it in Los Angelas. We've done it --

JUDGE NACHMAN: When in Los Angeles?

THE WITNESS: Approximately two years ago sir.

We've done it, on a combination basis where in Philadelphia and in New York City stores, well, we haven't done it completely amongst other stores, but we've selected stores to reduce part time help. In additions to do an entire area.

JUDGE NACHMAN: What criteria did you use in reaching this conclusion? Did you just pick out the store and say well, now the sales here are off and we've got three full time salesmen and nineteen part time salesmen, so we've got to cut down on the ratio here.

What criteria did you use?

THE WITNESS: Well, this is done by an experience factor sir.

We have -- we had made a study of -- through the productivity of part time help versus full time help, we have found that it is detrimental to our business in total, to an extent so where we are right now experimenting with changingour work week. We have plans to go to a four day, ten hour day. Which would vertually eliminate part time help, all the part time help, in our stores across the Country.

We have found, through an experienced factor, that part time help are not as productive as full time help, and it has seriously hurt our business.

JUDGE NACHMAN: Go ahead.

Q (by Mr. Dicker) Now Mr. Brien, after these conversations with Mr. Silverhorn and Mr. Holmes in Chicago, and you made -- in your contacts that you describe that you made with Mr. -- I believe Mr. Saphire, Mr. Crump?

A Yes?

Q What happened next with respect to Pittsburgh?

A Well, the answer that I was waiting for this informatio the availability of manpower to come back to me. Mr. Levine was on vacation, through -- I believe he came back to work on August the 25th, so there was nothing we could do the third week in Pittsburgh with Mr. Levine, since he was away.

When he came back on the 25th, he wasnotified by Mr. Silverhorn that I was going to conduct a change over from part time to full time.

MR. LADOV: Objection Your Honor. He's not competent to -- objection Your Honor.

JUDGE NACHMAN: Did Mr. Silverhorn give this information to Mr. Levine in your presence?

THE WITNESS: No sir.

JUDGE NACHMAN: All right. The answer will be stricken, it's hearsay.

Q (by Mr. Dicker) Mr. Silverhorn report to you?

A Mr. Silverhorn reported back a conversation with -- that he had with Mr. Levine. After -- either on August 25th, or shortly thereafter, passing along information that I was going to personally handle the change over of part time to full time people.

Q Did Mr. Silverhorn, pursuant to whose instructions, if any, did Mr. Silverhorn call Mr. Levine and tell him that?

A My instructions.

JUDGE NACHMAN: What was that? A telephone call or a face to face conversation?

THE WITNESS: This was a face to face conversation with him.

Q (by Mr. Dicker) With Silverhorn?

A With Silverhorn. This was conducted in a meeting that we had the earlier week.

Q Now Mr. Brien, when was the first time you learned about the union in Pittsburgh?

A September the 2nd.

Q How did you learn about it?

A We had a phonecall from Mr. Levine.

Q Tell us about that? When?

A Mr. Levine called me the morning of September the 2nd.

Q The day after Labor Day?

A Yes it is. To notify me that over the weekend he had received a notice from the union claiming representation of the employees, and that he had mailed me a copy of that document.

Q What, if anything, did you do then?

A I received a copy of the document on September the 2nd, I called Mr. Dicker in New York, advising him of what was transpiring, and bring him upto date basically on what our plans were in Pittsburgh with --

Q What kind of plans?

A With regard to the part time people. This was pressing onmy mind. I asked him what I should do in regards to pursuing this action.

Mr. Dicker advised me to do nothing with the part time replacements and/or the union situation, and we made a date to meet in Pittsburgh on September the 8th.

JUDGE NACHMAN: Is your office in Chicago open on Saturdays?

THE WITNESS: No sir. It's casual, sometimes not on formal hours.

JUDGE NACHMAN: Normally, no one is there on Saturday?

THE WITNESS: Normally no one is there, right.

Q (by Mr. Dicker) Mr. Brien, you've already testified as to the meeting on September the 8th. Just let me ask you one question concerning that meeting.

With respect to the full time, part time problem, which you've described, what, if anything, was decided at that meeting on September 8th?

A That we would proceed with replacement of part time help with full time help.

Q What did you do about that?

JUDGE NACHMAN: I'm sorry. I didn't hear your question.

Q (by Mr. Dicker) What did you do about that?

A I notified either on September the 8th or September the 9th, Mr. Holmes.

Q Mr. Holmes is who again?

A Mr. Holmes is my Administrative Assistant, he was in Chicago. I called him from Pittsburgh and in detail, over the telephone, laid out the plan in which we were going to replace the part time help with the full time help.

Mr. Levine -- Mr. Holmes then contacted the various--

Q You instructed Mr.Holmes to proceed?

A Proceed.

Q At that time, did you have any people available to go to Pittsburgh?

A There were people available to go to Pittsburgh from other cities, yes.

Q Who arranged for the people from the other cities to come into Pittsburgh?

A Mr. Holmes.

Q Did you tell Mr. Holmes which people were available?

A No. Mr. Holmes contacted the General Managers of those cities and received their names.

Q Did you tell Mr. Holmes which General Managers to contact?

A Yes.

Q Which were they?

A I didn't -- let me clarify that. I did not tell him in total which General Managers to contact. I told him to contact Mr. Crump and Mr. Saphire, since he, on his own, had already contacted several other General Managers.

Q By the way, is there a Labor Organization representing the employees in Philadelphia, where Mr. Crump is located?

A. Yes.

Q What about in New York, where Mr. Saphire is located?

A. There is also a Labor Union there.

JUDGE NACHMAN: How about in Erie?

THE WITNESS: No sir.

JUDGE NACHMAN: In Chicago?

THE WITNESS: No sir.

MR. DICKER: Mark this as Respondent's Exhibits 11(a) and 11(b) for identification.

(The documents above-referred to were marked Respondent's Exhibit Nos. 11(a) and 11(b) for identification.)

Q (by Mr. Dicker) Mr. Brien, let me show you 11(a) and 11(b) for identification, and ask you whether or not you can identify those?

A. Yes I can identify them.

Q What is 11(a)?

A. 11(a) is a breakdown of the sales volume for the Florsheim Shoe Stores in the Pittsburgh area, showing by month the 1975 volumes and the 1974 volumes and the percent of change.

JUDGE NACHMAN: '75 versus '74.

Q (by Mr. Dicker) What about 11(b)?

A 11(b) is a report showing the sales volume of the Florsheim Shoe Shops in Pittsburgh, indicating for weeks by weeks, showing 1975 volume and 1974 volume and the percent of change.

JUDGE NACHMAN: 11(b) begins with the week of June 5?

THE WITNESS: June 5, yes sir.

JUDGE NACHMAN: And goes through to December 31?

THE WITNESS: Yes sir.

Q (by Mr. Dicker) And 11(a) is --

JUDGE NACHMAN: By months.

THE WITNESS: It is by calendar months.

Q (by Mr. Dicker) Mr. Brien, 11(b) covers in part what's already in 11(a) in briefer form, is that right?

A It picks up at approximately in June and ends in December, and shows the break down of weeks, where 11(a) is on a -- figures, are consolidated on a monthly basis.

Q Mr. Brien, who compiled those figures?

A I compiled them from our company records.

JUDGE NACHMAN: The figures shown on this exhibit you compiled from your company records?

THE WITNESS: Yes.

Q (by Mr. Dicker) 11(a) and 11(b)?

A Yes sir.

Q You compiled them from your company records?

A Yes sir.

Q Those are the company records kept in the ordinary course of business?

A Yes sir.

Q Are they an accurate reflection of the company records?

A Yes.

MR. DICKER: I offer 11(a) and 11(b).

JUDGE NACHMAN: Any objection?

MR. LADOV: I object Your Honor again, the same --

JUDGE NACHMAN: The objection will be sustained, absent the original records for General Counsel's use on cross examination of the comparison.

Do you want the exhibit rejected at this time, or do you want me to hold it in advance?

MR. DICKER: No Your Honor. We will reject it at this time.

JUDGE NACHMAN: All right. 11(a) --

MR. DICKER: I have the same argument concerning their admissibility.

JUDGE NACHMAN: 11(a) will become rejected 3, and 11(b) will become rejected 4.

MR. DICKER: I think that's a little confusing.

I think the first six exhibits were also rejected, to my recollection.

JUDGE NACHMAN: The rejected exhibit 9 was a single page.

MR. DICKER: The first six exhibits Your Honor, were Respondent's Exhibits 1 thru 6 I believe. I may even be wrong, it may be even 1 thru 7, 1 thru 8. They were offered and rejected, and I think it would be easier for the record to mark those exhibits 11(a) and 11(b) rejected. Because otherwise, I am going to be totally confused.

JUDGE NACHMAN: All right. I think you have a point. I'll correct the record. What has been marked as exhibit 9, R-9, will become Rejected 10. And what has been marked as R-11(a) becomes Rejected 11(a) and (b).

MR. DICKER: R-9 is rejected?

JUDGE NACHMAN: 10, number 10.

MR. DICKER: There was a 10 in evidence, 10(a).

JUDGE NACHMAN: It becomes Rejected 10, not exhibit 10.

MR. DICKER: That's Rejected 10, and the others will be Rejected?

JUDGE NACHMAN: 11(a) and (b).

Q (by Mr. Dicker) Mr. Brien, --

MR. DICKER: Mark this as Respondent's Exhibits 12 and 13 for identification -- Respondent's Exhibit 12.

JUDGE NACHMAN: This will be R-12.

MR. DICKER: For identification.

(The document above-referred to was marked Respondent's Exhibit No. 12 for identification.)

Q (by Mr. Dicker) Mr. Brien, let me show you Respondent's Exhibit 12 for identification, and ask you whether you can identify that?

A. This is a termination notice used by the Florsheim Shoe Shops.

Q Is this the usual form that the company uses?

A. This is one of two forms that we use, yes.

Q Is this the form you used back in 1971?

A. Yes.

Q Was it in the usual course of business for the company to use this form?

A. Yes.

Q Where did you locate this termination notice Mr. Brien?

A. This termination notice was in our employee files in the payroll department.

Q It was in your employee files in the payroll department?

A. Yes.

Q Normally, is that where the termination notices are kept?

A That's correct.

MR. DICKER: I offer --

JUDGE NACHMAN: In your Chicago office or the Pittsburgh office?

THE WITNESS: In the Chicago office.

MR. DICKER: I offer Respondent's Exhibit 12.

MR. LADOV: I would like to see the original please.

JUDGE NACHMAN: Whose signature is that on there Mr. Brien?

THE WITNESS: That is Mr. Moran's, who is the Store Manager of the Northway Mall Store.

MR. LADOV: Voir Dire on this please Your Honor.

JUDGE NACHMAN: Voir Dire, yes.

VOIR DIRE EXAMINATION

Q (by Mr. Ladov) Mr. Brien, please examine Respondent's Exhibit No. 12. Whose writing is on the first line? Whose writing is that?

JUDGE NACHMAN: Do you mean the written portion?

Q (by Mr. Ladov) The written portion.

MR. DICKER: If he knows.

THE WITNESS: I don't know, I would assume. And all I can do is assume that it was Mr. Moran.

Q (by Mr. Ladov) You do not know?

A I do not know.

Q Do you know whose writing is on it, other than the signature which says R. J. Moran?

A I don't know any -- I don't know who wrote anything on this sir.

Q Where did you find this?

A In the employees' payroll jacket, which is maintained in our payroll department in Chicago.

Q When did you find it?

A We found this about three weeks ago sir.

MR. LADOV: Your Honor, I only object to the authenticity of this. Certainly Mr. Brien is not -- he is not testifying that it was ever written by him, or that any of the facts alleged here are true.

END OF VOIR DIRE EXAMINATION

JUDGE NACHMAN: No. The only thing he is testifying to is that he found this in the company's personnel records in the Chicago office. That's all I am receiving it for.

MR. LADOV: Fine.

MR. DICKER: It's a business record.

JUDGE NACHMAN: Respondent's exhibit 12 will be received.

(The document heretofore marked as Respondent's Exhibit No. 12 was received in evidence.)

MR. DICKER: I have no further questions of Mr. Brien at this time Your Honor.

JUDGE NACHMAN: Let's be off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

We will break now for lunch until quarter past one.

Off the record.

(Whereupon, at 12:15 p.m., the hearing was recessed, to reconvene at 1:15 p.m. the same day.)

AFTERNOON SESSION

1:15 p.m.

JUDGE NACHMAN: On the record.

I understand that before your cross examination begins, you have a matter to take up?

MR. DICKER: Yes Your Honor.

With respect to Rejected Exhibit 11(a) and 11(b), I have the basic company records, which we obtained over the luncheon recess, which shows from which 11(a) and 11(b) have been compiled.

It has in it a great deal of other information, which the company considers to be rather confidential, and could be damaging to its competitive ability to remain in business in this city.

I have spoken to Counsel for the General Counsel prior to resumption, and have offered him the opportunity to look at these documents,with us present or without us present, and give him any information he may need or any interpretation he may need of the basic company records. With the idea that if he finds that they are accurate, that is 11(a) and 11(b) are accurate, at least the objection to the effect that it's not the basic company record would be withdrawn. Obviously, General Counsel is reserving any other objections he may have.

JUDGE NACHMAN: All right. I might say to the

General Counsel that if after examining the basic data, you find that it accurately reflects the information on exhibits R-11(a) and 11(b), I see no purpose for introducing the basic data, because it will only clutter the record unnecessarily. If however, you wish to use them in cross examination, or for some purpose to show that (a) and (b) are for some reason inaccurate, it's another matter.

All right. Is this all you wish to state?

MR. DICKER: One other matter Your Honor.

With respect to Rejected Exhibit 10, R-9 for identification, we are attempting to do the same thing with respect to that document. I don't know whether or not we'll have the information, but we may or may not do it without -- depending on whether we can get it.

JUDGE NACHMAN: We will cross that bridge when we come to it.

MR. DICKER: Thank you Your Honor.

JUDGE NACHMAN: You are now delivering the basic material to the General Counsel.

MR. DICKER: With respect to 11(a) your Honor, 11(b) is being compiled from -- is being brought in from the file storage, we will have it before the close of the hearing this afternoon, so that he may look at it in full time.

JUDGE NACHMAN: Now before we -- before you proceed with your cross examination, I would like to ask Counsel what is the relevance of R-12? It's a termination notice.

MR. DICKER: Yes. I think Your HOnor, that it's relevant with respect to the direct testimony of Mr. Nakowski and the reasons why he was terminated.

JUDGE NACHMAN: Well, I'm not trying -- I gather from this that he was terminated more than once?

MR. DICKER: Yes Your Honor, and there was some testimony --

JUDGE NACHMAN: I am not trying any question here as to his first termination. That's not before me.

MR. DICKER: It goes to his credibility and to the reason of his current termination.

Our position is that this is -- he's been terminated for the same reason he was terminated -- he was terminated previously for the same reason he was being terminated on the --

JUDGE NACHMAN: All right. It has been received. Thank you.

Go ahead and cross examine.

CROSS EXAMINATION

Q (by Mr. Ladov) Mr. Brien, for the purpose of cross examination it might help us all if you had this calendar available to you.

Mr. Brien, let's begin in August 1975, when did you return from vacation?

A August 18th.

JUDGE NACHMAN: That was your first day in the office, from vacation?

THE WITNESS: That was my first day in the office, yes sir, that was a Monday.

Q (by Mr. Ladov) You returned that Monday?

A Yes sir.

Q Is it your testimony Mr. Brien, that on that Monday you found a follow-up memo?

A Not on that Monday, sometime during that week.

Q Where was this memo?

A On my desk calendar.

Q On your desk calendar?

A Yes.

Q Where on your desk calendar?

A I have a calendar with a pad, on which I make many many memos.

JUDGE NACHMAN: I suppose each sheet of paper has a different date?

THE WITNESS: Yes sir.

Q (by Mr. Ladov) What date was this memo on?

A I don't recall sir.

Q Was it on a date for August? In the month of August?

A It was during the week of August 17th.

Q When did you --

A Whether it would appear Monday or Tuesday, Wednesday or Thursday or Friday, I don't remember which day.

Q When did you write this memo?

A Sometime prior to that. Probably -- again, I am guessing, it might have been a month, two months prior to that.

Q July or June?

A Very possibly, yes.

Q Did you write it on a date in July or June on the calendar itself?

A No, I wrote it on a date of August. It appeared on a calendar date in August.

Q Calendar date in August?

A Yes. The third week in August.

Q It's your testimony that you wrote this memo when?

A Prior to that date.

Q In what month?

A Mr. Ladov, it could have been thirty days. It could have been in July. I don't remember precisely when it was, but I, as a matter of practice, use that for long range reminders.

JUDGE NACHMAN: Well, whatever date you made this notation on, whether it was June or July, what happened at that time that caused you to make a notation sometime the third week of August?

THE WITNESS: I would assume sir, it must have been sometime in July.

JUDGE NACHMAN: All right. What motivated you in making some reference ahead to the third week in August?

THE WITNESS: I was too busy to handle that matter at that time. I realized that I was going on vacation the first two weeks in August, therefore, it was something I wanted to get into immediately upon my return from vacation. That would have been my motivation.

JUDGE NACHMAN: Go ahead.

Q (by Mr. Ladov) You did testify earlier that during the month of July 1975, you received no reports regarding the Pittsburgh situation?

A None that I can remember.

Q So that was there any specific occurrence thatmade you write this memo in July to remind yourself come August --

A Mr. Ladov, there was no bolt of lightning or anything. I may have thought about it, I may have doneit in the latter part of July, when I was reviewing the things that I was going to do upon my return from vacation, and I might have set it down at that.

I would have -- I had a lot of things to cover during that time, and I probably sat down and spread out during that first week or third week in August, my first week of return from vacation, many of the things that I wanted to get in and review, because I had not been prompt at my desk for several months now.

Q What then did you do after you noticed this memo?

A I called in Mr. Silverhorn.

Q Anyone else?

A Not that I can recall.

Q This is still the week of August 16th, August 18th?

A Yes.

Q Did you call in Mr. Silverhorn to deal specifically with the Pittsburgh problem?

A Yes.

Q What was said during this meeting?

A I wanted to be brought up to date from Mr. Silverhorn on what progress had been made regarding the part time situation of Pittsburgh.

Q What did Mr. Silverhorn tell you?

A He told me that no progress had been made.

Q Did you ask him how he knew that?

A How specifically he knew it?

Q Did you ask him how he knew that no progress had been made?

A I don't recall asking thatspecific question, but I may have asked several other questions which would have assured me that he knew what he was talking about.

Q Did he tell you how he knew that no progress had been made?

A I think at that time we reviewed from salary vouchers and we saw the same payroll registers, and saw the same proportional part time, full time people.

I am sure that I would have verified it myself.

Q Do you remember which salary vouchers for what month and what stores you saw?

A It probably would have been the current salary vouchers.

Q Do you recall?

A Do I recall, no. I would have probably asked him -- I would have asked him for the most current salary vouchers that he could lay his hands on and review with that.

Q So as a result of this meeting, talking with Mr. Silverhorn, you found that nothing had been done. And Mr. Silverhorn informed you that it was the same composition of employees that were presently in Pittsburgh as had been throughout the year. Is that correct?

A That's correct.

Q What did you tell Mr. Silverhorn at this time?

A I spent about the first ten minutes arguing my disbelief that some thing could not be done in the period of eight months, and my disappointment with him and Mr. Levine, that they had not accomplished what the company desired to have accomplished. And told him that neither he nor Mr. Levine were going to be handling this matter, that I was going to handle it.

Q Did you direct Mr. Silverhorn to take any action at this meeting?

A At this meeting, I instructed Mr. Silverhorn that I was going to handle the matter and he was to so instruct Mr. Levine.

Q Did Mr. Silverhorn ever talk to Mr. Levine the week of August 18th, to that Friday, is that the 22nd?

A Mr. Levine was on vacation that week.

Q Please answer my question.

A No.

Q Did you direct him to contact Mr. Levine that week?

A I directed Mr. Silverhorn to contact Mr. Levine immediately. Mr. Silverhorn told me that Mr. Levine was on vacation, he could not do so, and as soon as Mr. Levine returned from vacation, he would contact him and relay my message.

Q The message that you directed Mr. Silverhorn to relay to Mr. Levine was that you would personally handle what? That you would handle, personally, the reduction of part time employees, is that correct?

A Yes.

Q That was the sole message that you had Mr. -- that you directed Mr. Silverhorn to relay to Mr. Levine at this time?

A Yes.

Q Did anything else occur at this meeting regarding the decision?

A Regarding this matter, no.

Q Did you have any other meetings with Mr. Silverhorn the week ending August 22nd?

A I did not have any meetings with him, no. I can't recall any.

Q Is it your testimony that during the week of August 22nd, you directed Mr. Silverhorn to contact Mr. Levine solely to tell him that you, personally, would be handling thereduction of part time employees in Pittsburgh?

A The week of August 18th, not the 22nd.

Q From the 18th to the 22nd?

A Yes.

Q In that time?

A Yes.

MR. LADOV: I would like this marked as General Counsel's Exhibit No. 29.

(The document above-referred to was marked General Counsel's Exhibit No. 29 for identification.)

MR. LADOV: May we go off the record for one second?

JUDGE NACHMAN: Off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

Q (by MR. Ladov) Mr. Brien, I showyou what has been marked --

JUDGE NACHMAN: Excuse me one minute gentlemen, another matter I have to take care of.

Off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

Q (by Mr. Ladov) Mr. Brien, I show you what has been marked as General Counsel's Exhibit No. 29.

JUDGE NACHMAN: For identification.

Q (by Mr. Ladov) For identification. Can you identify what has been marked as General Counsel's Exhibit No. 29 Mr. Brien?

JUDGE NACHMAN: All you have to do is to ask him whether that is his signature on the document.

Q (by Mr. Ladov) All right then Mr. Brien, would you turn to page 4 of General -- marked General Counsel's Exhibit No. 29. Is that your signature on the bottom of that page?

A Yes sir.

Q Is this the statement that you submitted to the National Labor Relations Board?

A Yes.

Q Did you execute this on October 22nd, 1975?

JUDGE NACHMAN: What difference does that make?

MR. LADOV: All right.

Q (by Mr. Ladov) Mr. Brien --

JUDGE NACHMAN: It is admissible if at all as a prior inconsistent statement, if inconsistencies develop.

Q (by Mr. Ladov) I ask you Mr. Brien, to turn to page 2, paragraph 10. Would you read that paragraph to yourself please?

JUDGE NACHMAN: It is not only admissible to show inconsistent statements, but any admission that's in it, it's also for that.

MR. DICKER: Or any corroborations on cross examination.

MR. LADOV: Your Honor, would it be easier for you if we had Mr. Brien read the statement aloud, since you really don't have any --

JUDGE NACHMAN: There is no purpose of reading the statement into the record if you are going to offer it as an exhibit.

Q (by Mr. Ladov) Mr. Brien, regarding paragraph 10, is that your testimony here today?

A Basically, yes.

JUDGE NACHMAN: Of couse I have the faintest idea what paragraph 10 says, I don't have a copy of it.

Q (by Mr. Ladov) Did you order Mr. Silverhorn to contact Mr. Levine during the week of August 22nd?

A Yes.

Q Did you order [illegible] contact Mr. Levine for the purposes of finding [illegible] the status of part time employees in the Pittsburgh area stores?

A How do you mean that sir?

Q If there were still part time -- if your earlier orders, if there was -- strike that please.

If there were still part time employees employed in the Pittsburgh stores?

A I did not -- the major thing was that during the meeting with Mr. Silverhorn and I, we had established that there was still a preponderance of part time people working in the Pittsburgh stores. I instructed Mr. Levine -- excuse me, Mr. Silverhorn at that meeting to contact Mr. Levine and tell him that I was going to handle this matter myself.

Q Now my question is Mr. Brien, did you direct Mr. Silverhorn to contact Mr. Levine during the week of August 18th, ending August 22nd, to ask Mr. Levine if your earlier orders had been executed?

A I asked Mr. Levine -- I asked Mr. Silverhorn to do that, yes.

Q You did?

A Yes.

Q Did Mr. Silverhorn tell you that he contacted Mr. Levine that week?

A He told me that he couldn't have contacted him that week.

JUDGE NACHMAN: I didn't hear your answer.

THE WITNESS: He said he couldn't contact him that week, Mr. Levine was on vacation and did not return until the 25th, returned to work until the 25th.

Q (by Mr. Ladov) Did Mr. Silverhorn tell you the week ending August 22nd, that your earlier orders had not been executed?

A During the week of August 22nd, yes.

Q Ending.

A Ending, yes he told me that, yes.

Q Did he tell you that Mr. Levine had checked his applicant file -- I'm sorry. Strike that.

Did you ask Mr. Silverhorn to contact Mr.Levine to check his applicant file and report on the availability of full time salesmen in the area?

A Not during the week of August 22nd. Mr. Levine could not have done that, since he was not present.

Q Did you direct Mr. Silverhorn to do that the week of August 22nd?

A Yes.

Q You did?

A Yes.

Q Did you receive a response from Mr. Levine the week of August 22nd, to these two questions?

A No sir.

Q You did not?

A No sir.

Q Did Mr. Silverhorn receive a response from Mr. Levine to these two questions?

MR. DICKER: Objection.

JUDGE NACHMAN: Do you know the answer?

THE WITNESS: No.

Q (by Mr. Ladov) Did Mr. Silverhorn, during the week ending August 22nd, ever inform you that full time people in Pittsburgh were not available?

A Mr. Levine -- or excuse me. Mr. Silverhorn probably made that statement to me, but that was based on prior knowledge, not knowledge that he received that week. Because this is what Mr. Levine had been consistently telling him for several months now.

Q Did Mr. Silverhorn, the week ending August 22nd, tell you that Mr. Levine had been unable --strike that.

During the week ending August 22nd Mr. Brien, did Mr. Silverhorn inform you that the latest -- that the last application for full time work in the Pittsburgh stores was last September, 1974?

A. It's very possible he did.

Q. Did he tell you how he learned this?

A. I'm sure he had learned this through --

Q. Did he tell you how he had learned it?

A. Did he tell me specifically how he learned it? How he had this knowledge?

Q. Yes.

A. No.

Q. Mr. Brien, during the week ending August 22nd, didn't you direct Mr. Silverhorn to contact Mr. Levine that week?

A. Yes.

Q. Let's go to the next week Mr. Brien, that would be what? The week beginning August 24th?

A. That's a Sunday, yes.

Q. All right. Before we get to that week, I'm sorry. Is it your testimony now Mr. Brien, that as of August 22nd of 1975, you had made a firm decision to reduce the part time employees in Pittsburgh?

A. Yes.

Q. I beg your pardon?

A. Yes.

Q. Did you -- did this decision to reduce encompass the elimination of all part time employees in the Pittsburgh stores?

A. Yes.

Q. So then when you used the word reduce, you tell us, what did you want,to eliminate all part time employees?

A. I used both phrases, interchangeable, one to reduce and one to eliminate.

Q. Do they mean the same thing in your mind as of August 22nd?

A. Yes. This was a goal that I was working toward.

Q. This was the final and firm decision as of August 22nd, is that your testimony?

A. This had been a continuing decision on my part for many months. Now the finalized -- the only thing that was finalized regarding that decision the week of August 22nd, is that I was going to handle the matters of reducing or eliminating part time people in Pittsburgh.

Q. So then as of August 22nd, it was a final and firm decision in your mind, is that your testimony?

A. Yes sir.

JUDGE NACHMAN: Well, how did you envision these stores to operate? Only with full time people?

THE WITNESS: Yes sir.

Q. (by Mr. Ladov) What occurred the next week Mr. Brien, did you have a meeting with Mr. Silverhorn and Holmes regarding this matter?

A. Oh that meeting was held the week of August 22nd.

Q You had two meetings the week of August 22nd?

A No. Mr. Holmes was present with Mr. Silverhorn for a part of the meeting.

Q Part of the meeting?

A Yes.

Q Let's go to the third week in August. Did you have any other meetings with Mr. Silverhorn and Mr. Holmes?

A. No sir.

Q You had no meetings the third week of August.

MR. DICKER: Objection. I don't know what we mean by the third week in August.

JUDGE NACHMAN: The week of August 18th?

MR. LADOV: Yes.

Q (by Mr. Ladov) No. Not the week -- I'm sorry.

Did you have any meetings the week of August 25th, beginning August 25th, with Mr. Silverhorn and Mr. Holmes?

A. I did not with Mr. Silverhorn. I think I had -- and this is strictly on recall, that I had a minor meeting with Mr. Holmes, asking him if he had made any progress in coming up with the availability of people to be transferred to Pittsburgh.

Q When did you direct Mr. Holmes to deal with the availability of transfers?

A This was at the meeting, the tail end of the meeting that I had in the third week of August. The meeting with

Mr. Silverhorn.

Q You had one meeting the week ending August 22nd on this matter, right?

A That's correct.

Q You had no meetings the week ending August 29th on this matter, right?

A As I said, I might have had with Mr. Holmes.

Q Is it your testimony that sometime within the week ending August 29th, that you contacted, that you spoke with Mr. Levine?

A No sir. That is not my testimony.

Q Did Mr. Silverhorn inform you that he had spoken with Mr. Levine?

A Yes.

Q What did he say Mr. Levine had told him?

A Excuse me?

Q What did he tell you Mr. Levine had told him during the week ending August 29?

A Mr. Silverhorn said he had contacted Mr. Levine during that week, and had passed along my instructions that were given to both Mr. Silverhorn and Levine, and pure and simple, the jest of Mr. Levine's answer was okay. Very simple. There was no rebuttal or anything else.

Q Did Mr. Silverhorn inform you that Mr. Levine was unable to obtain any full time salesmen in Pittsburgh areas?

A. Yes. Mr. Silverhorn had informed me to that fact.

Q. The week ending August 29th?

A. Not during that week, no.

Q. The week ending August 22nd?

A. He repeated that statement to me during that meeting.

Q. During that meeting?

JUDGE NACHMAN: Do you mean it was during that week ending August 22nd?

THE WITNESS: Yes sir.

Q. (by Mr. Ladov) Did you ever request Mr. Silverhorn to ask Mr. Levine to check his applicant file and report on the availability of full time salesmen in the area?

A. Yes. That would have been earlier in the year.

Q. Earlier in the year. Did you do that the week of August 22nd 1975?

A. No sir.

JUDGE NACHMAN: What do you mean earlier in the year?

THE WITNESS: February, March.

Q. (by Mr. Ladov) During the week ending August 29th, is it your testimony that you directed sometime that week, you directed Mr. Holmes to find full time employees who were available for transfer?

A. This was a continuing request that started the week of the 22nd, and I told you, I believe we had a meeting the week of the -- hold it. Well, now you got me confused. The week of the 18th, and I believe we also had a meeting the week of the 25th.

JUDGE NACHMAN: Thatis August?

THE WITNESS: August, yes sir.

Q (by Mr. Ladov) You called two area managers yourself didn't you?

A Yes sir.

Q They were Mr. Crump and Mr. --

A Saphire.

Q Saphire. And what did you ask them?

A I asked them if they had anybody, any salesmen, who would be willing to relocate.

Q Did you tell them where?

A No sir.

Q You did not tell them in Pittsburgh?

A Not at that time.

Q Not at that time?

A No sir.

Q What was their response?

A Their response was that they would check on it and let me know.

Q Mr. Brien, would you please look at paragraph 11 of your affidavit?

A Yes.

Q I direct you to the line, line 3 of that affidavit. Starting with the sentence, "Within the two weeks." Would you read that please to yourself?

A Yes.

Q Is that your testimony today?

A No.

MR. LADOV: Fine. No more --

THE WITNESS: Just a minute.

MR. LADOV: No, no, no, no. You answered the question. That's all I wanted to know.

JUDGE NACHMAN: You've answered the question.

Q (by Mr. Ladov) When you spoke with Mr. Crump and Mr. Saphire, did they give you any names of employees who would be willing to relocate?

A In which conversation would this be?

Q During the week of August 29th, ending August 29th?

A At that time, no, he gave me no names.

Q Did you ask for any names?

A Not at that time.

Q Mr. Crump is the Area Manager in Philadelphia?

A Yes.

Q Are the Philadelphia stores unionized?

A Yes.

Q Are there part time employees in the Philadelphia stores?

A In some.

Q In some. Are there part time employees in New York Citystores?

A No.

Q Mr. Brien --

A Let me clarify that. There may be some part time porters, but not salesmen.

JUDGE NACHMAN: What was that? I didn't hear your answer.

THE WITNESS: I asked to clarify that. There may be some part time porters, but not salesmen.

Q (by Mr. Ladov) There are porters, part time porters?

A On occasions there are, not consistently.

Q I direct you to page 3, paragraph 12 of your affidavit Mr. Brien. Would you read that paragraph 12 please, to yourself?

A Yes.

Q Regarding your statement, regarding the city of Philadelphia, is that accurate?

A The statement is not.

Q It's not accurate?

A No sir.

JUDGE NACHMAN: Do you mean paragraph 12 is not accurate?

THE WITNESS: Yes.

Q (by Mr. Ladov) Through August 29th, did Mr. Holmes report any names of any employees that were available for transfer to Pittsburgh to you, as of that time Mr. Brien?

A I do not recall him doing so, even though he might have had names, he had not reported them to me.

Q He did not report them to you?

A No.

Q You were handling this personally, right?

A Yes.

Q As of August 29th, you had no names of any employees who were willing to transfer to Pittsburgh, Pennsylvania. Is that correct?

JUDGE NACHMAN: The witness has testified, there is no point in repeating it.

Q (by Mr. Ladov) Is your testimony that you first learned of the employees attempt to organize a union in the Pittsburgh stores on the 2nd of September, is that correct?

A Yes it is.

Q How did you learn that?

A I had a phonecall. It was the first knowledge I had.

Q When?

A The morning of September 2nd.

Q Who was the phonecall from?

A Mr. Levine.

Q What did he tell you?

A He told me that he had received a notice, the union claiming representation of the employees.

Q Did he tell you when he had received this notice?

A He told me he had received it, I believe his statement was last week. He had made a copy, and a copy was in the mail to me.

Q Did he say when last week?

A Not at that time sir.

Q I beg your pardon?

A Not at that time.

Q At that time, did he say he had received it over the week end?

A Sir, he told me he had received it that week, last week. That was the statement to me.

Q As General Manager of all the Florsheim Shoes Mr. Brien, are you in charge of Labor Relations for these stores?

A Yes.

Q Do you have an outstanding order that anything that comes up with unions for the first time, you should be contacted immediately?

A Yes.

Q Were you in the office Friday, August 29th, Mr. Brien?

A To the best of my recollection, yes.

Q Did Mr. Levine contact -- did you speak with Mr. Levine August 29th?

A No sir.

JUDGE NACHMAN: Your answer was no?

THE WITNESS: No.

Q (by Mr. Ladov) You came to Pittsburgh September 8th, is that correct?

A Yes sir.

Q Had you ever been in Pittsburgh before Mr. Brien?

A Yes sir.

Q When?

A About five years prior to that.

Q Five years prior. You had not been to Pittsburgh for five years?

A That's correct.

Q What time did you come into Pittsburgh on September 8th?

JUDGE NACHMAN: Do you mean what hour of the day?

MR. LADOV: Approximately, yes.

THE WITNESS: Sunday evening.

Q (by Mr. Ladov) Sunday evening. When did you meet with Mr. Dicker?

A Monday morning.

Q Who else did youmeet with?

A Mr. Silverhorn accompanied me on the trip.

Q So you and Mr. Dicker and Mr. Silverhorn met Monday morning, is that correct?

A That's correct.

Q Did you meet with Mr. Levine that day?

A That's correct.

Q When did you meet with Mr. Levine?

A Sometime early in the morning. It could have been about nine o'clock.

Q Was he with -- in the meeting with you and Mr. Silverhorn and Mr. Dicker?

A The four of us did have a meeting, yes.

Q Did just the three of you, Silverhorn, Dicker and yourself have a meeting first?

A Yes.

Q And then you had another, a second meeting, the three of you plus Mr. Levine?

A That's corract.

Q And you discussed the union campaign during this meeting?

MR. DICKER: Objection. We've already had a -- Mr. Levine was called as an allegedly hostile witness by the Board earlier inthis proceeding, and they had testimony concerning this same manner.

JUDGE NACHMAN: Well, I'll let --

MR. DICKER: It's also beyond the scope of direct examination.

MR. LADOV: You brought up the September 8th meeting.

MR. DICKER: I did not.

JUDGE NACHMAN: The objection is overruled.

MR. DICKER: Your Honor, this is going into the same area we went in before.

JUDGE NACHMAN: Well, it may be. Go ahead.

Q (by Mr. Ladov) How long was your meeting with Mr. Dicker, Mr. Silverhorn and Mr. Levine?

MR. DICKER: I have a continuing objection to this line of questioning Your Honor.

JUDGE NACHMAN: Well, I think you ought to make an individual objection, because there might be some areas that your objection may be well taken.

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

Q (by Mr. Ladov) How long was your meeting Mr. Brien?

A Approximately forty-five minutes to an hour.

Q At this meeting, did you mention your decision to replace part time help to Mr. Levine?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: I reaffirmed to Mr. Levine that until

Mr. Dicker and myself had discussed the matter and reconsidered all the aspects of it, that we would continue not to replace the part time help until it was otherwise advised that we were going to do so.

Q (by Mr. Ladov) Did you meet with any individual store managers on September 8th Mr. Brien?

A Yes.

MR. DICKER: Objection.

JUDGE NACHMAN: Over ruled.

MR. DICKER: The same objections are appearing on page 161 and 163 in the record Your Honor.

JUDGE NACHMAN: It's all right.

Q (by Mr. Ladov) Did you meet with them altogether Mr. Brien?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: No sir.

Q (by Mr. Ladov) Separately?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: Yes sir.

Q (by Mr. Ladov) Who was the first store manager that you met with that day?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: I don't recall, I occasionally talk with people.

Q (by Mr. Ladov) You had five separate meetings with the five separate store managers?

A Yes.

Q Did you mention, during any of these meetings, your decision to replace part time help in Pittsburgh?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: Only to Mr. Levine.

Q (by Mr. Ladov) Only to Mr. Levine. Did you direct, at any time during September 8th, Mr. Levine to mention the decision to eliminate part time employees to the managers?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: No sir.

Q (by Mr. Ladov) Did you at anytime on September 8th, specifically instruct Mr. Levine not to mention the decision to eliminate part time employees to the individual managers?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: No sir.

Q (by Mr. Ladov) Did you have any further meetings on September 8th, after you met with the individual store managers?

MR. DICKER: Objection.

JUDGE NACHMAN: With whom?

MR. LADOV: With whom, I am asking him.

Q (by Mr. Ladov) Did you have any other --

JUDGE NACHMAN: Well, he may have met with some friends down at the bar and grill.

MR. LADOV: Strike the question.

Q (by Mr. Ladov) On September 9th, were you in Pittsburgh on September 9th Mr. Brien?

A Yes sir.

MR. DICKER: Objection. Beyond the scope of direct.

JUDGE NACHMAN: Over ruled.

MR. DICKER: YOur Honor, I point out to you on the contrary, when I was examining the witness on the matters beyond the scope of direct, and specifically page 447 of the record.

JUDGE NACHMAN: All right. Whatever the record shows, it shows.

Q (by Mr. Ladov) You were in Pittsburgh on September 9th?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: Yes I was.

Q (by Mr. Ladov) What did you do in Pittsburgh on

September 9th Mr. Brien?

MR.DICKER: Objection.

JUDGE NACHMAN: With referance to what?

MR. LADOV: With reference to -- did you visit the stores Mr. Brien?

THE WITNESS· Yes sir.

Q (by Mr. Ladov) Did you visit all five stores that day?

A. Yes sir.

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

MR. DICKER: Your Honor, on 447 you indicated the rules on the cross examination will be confined to the scope of direct, and now we're going beyond the scope of direct.

JUDGE NACHMAN: That is your opinion. I don't think he is going beyond the scope of direct.

MR. DICKER: Your Honor, I did not ask him anything about a meeting on September 9th, or anything that happened on September 9th. The objection --

JUDGE NACHMAN: The objection is overruled.

MR. DICKER: You are going contrary to the ruling you made earlier.

JUDGE NACHMAN: Counsel, don't argue with me.

MR. DICKER: I want the record clear Your Honor, that

I brought it to your attention.

JUDGE NACHMAN: Don't argue with me.

Go ahead Mr. Ladov.

Q (by Mr. Ladov) Did you visit the individual stores with Mr. Silverhorn?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

Q (by Mr. Ladov) On September 9th?

A Yes.

Q And with Mr. Levine?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: Yes.

Q (by Mr. Ladov) Did you, on September 9th, inform any of the individual store managers of your decision to eliminate part time employees?

MR. DICKER: Objection. Your Honor, this is well going beyond beyond the scope of direct.

JUDGE NACHMAN: Overruled.

THE WITNESS: No.

Q (by Mr. Ladov) Did Mr. Levine, on September 9th, in your presence, inform any of the store managers of your decision to eliminate all part time employees?

MR. DICKER: Objection.

JUDGENACHMAN: Overruled.

THE WITNESS: No.

Q (by Mr. Ladov) Did Mr. Silverhorn, on September 9th in your presence, inform any ofthe individual store managers of your decision to eliminate all part time employees?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: No.

Q (by Mr. Ladov) Is it your testimony Mr. Brian, that after you visited the five stores on September 9th, you called Mr. Holmes, who was then in Chicago?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: I do not believe that after I visited the five, that somewhere during that day, I did call Mr. Holmes.

Q (by Mr.Ladov) And you testified earlier that you called Mr. Holmes, what did you tell him?

A I told him that we would continue with the replacement of part time help in Pittsburgh.

Q You testified earlier that you, during this conversation in detail, laid out the plans of the replacement, is that correct?

A In which --

JUDGE NACHMAN: Do you mean the September 9th conversation with Mr. Holmes?

MR. LADOV: Right.

Q (by Mr. Ladov) You've testified that you, during this conversation in detail, laid out the plans of the replacement?

A I talked to Mr. Holmes on both days, both the 8th and 9th, between both of those conversations, I did lay out in detail the replacement of the part time people.

Q What were those details Mr. Brien? What did you tell Mr. Holmes on September 9th?

A That we would proceed as we had originally decided to replace the part time people in Pittsburgh, and if it was necessary, to bring in people from the outside to do so, we would do so. I told him who to contact.

Q Who did you tell him to contact?

A I told him to contact the two people that I had been in direct contact with, Mr. Saphire and Mr. Crump, and to tell them that we were going to go through and we were going to transfer people into Pittsburgh.

In addition, he was to contact people he had been working with, and activate the transfers for the necessary people to properly staff the stores.

That we should do this --

Q Did you tell him at this time how he was to properly staff the stores?

A Mr. Holmes is experienced enough. I didn't have to tell him.

JUDGE NACHMAN: The question is did you tell him?

THE WITNESS: No, I did not.

Q (by Mr. Ladov) At this time,did you tell him that all part time employees would be eliminated?

A Yes.

Q And that this was a firm decision in your mind as of September 9th, is that your testimony?

A Yes.

Q During this conversation with Mr. Holmes, did you tell him how many people would be needed?

A Which conversation sir?

Q On September 9th.

A Not to the best of my recollection.

JUDGE NACHMAN: Did you say not?

THE WITNESS: Not to the best of my recollection.

Q (by Mr. Ladov) Did you tell him that -- did you have another conversation with Mr. Holmes on September 8th?

A Yes.

Q By telephone, you were in Pittsburgh and he was in Chicago?

A That's correct.

Q What did you tell him during that conversation?

JUDGE NACHMAN: Counsel, I thinkyou ought to confine it to some subject.

Q (by Mr. Ladov) In regard to the details, did you tell him on September 8th how many replacements would be needed?

A Not in pure numbers. We probably discussed approximate numbers, because at that time we did not know how many part timers could work full time. That had not been determined yet. I believe at that time, we had one full time employee to replace, and I think we talked approximate numbers, but as far as fixing a firm number, no sir. We just talked approximations.

Q Is it your testimony Mr. Brien, that on September 9th, when you called Mr. Holmes, you informed him that you had made the final decision to put full time staff into the Pittsburgh stores?

A I think at -- no, I don't think. I know at that conversation, it was reaffirmation of the decision that was made on September the 8th.

Q On September the 8th, what decision was made on September the 8th?

A To replace the part time people inPittsburgh.

Q It's your testimony that the final decision to replace part time people in Pittsburgh, was made on September 8th?

MR. DICKER: Objection.

MR. LADOV: Is that correct?

JUDGE NACHMAN: Overruled.

Q (by Mr. Ladov) Is that correct?

A Yes.

Q That September 8th was the day you made this decision?

A I personally made that decision, yes.

Q On September 8th?

A Again, this was a continuing, this was a continuing decision. The decision had been made prior to that, the decision had been made earlier in the year, and was -- had been continuing in various stages of degrees for several months.

JUDGE NACHMAN: When did you finally reach to the point, that you came to the conclusion now this is it, There will be no more part time employees?

THE WITNESS: The week of -- this had been done early. This startedin January, February and March of 1975. This is when I started on the program to eliminate and reduce or phase it out. To phase out the part time people in Pittsburgh. This had been a continuing thing, again, with various varying degrees of pressure applied during the year.

JUDGE NACHMAN: But apparently it had not been successful?

THE WITNESS: It had not been successful.

JUDGE NACHMAN: At some point, you came to the conclusion of the lines being drawn, I'm going to get rid of them, and right now.

THE WITNESS: That was the week of August 18th.

JUDGE NACHMAN: Well, then that was deferred for at least months, wasn't it?

THE WITNESS: Well, it was deferred on September the 2nd sir.

JUDGE NACHMAN: All right, now when after that deferral, when did you finally reach the conclusion that the lines are firmly and finally drawn?

THE WITNESS: The only reason for the delay on September the 2nd, was that I did want to talk to my Counsel, Mr. Dicker.

JUDGE NACHMAN: All right, now --

THE WITNESS: As to what risk had been taken. My decision as to replacing the part time people was not dropped and then renewed.

JUDGE NACHMAN: All right, but it was suspended at least until after you talked to Mr. Dicker?

THE WITNESS: Yes sir. I had a new factor put in there.

JUDGE NACHMAN: All right, now you discussed it with Mr. Dicker and you sought his advice and you got his advice, and then you still concluded that you were going to terminate the part time employees?

THE WITNESS: Yes.

JUDGE NACHMAN: Now when did you make that decision?

THE WITNESS: Late in the day of September the 8th.

JUDGE NACHMAN: All right.

Q (by Mr. Ladov) Now Mr. Brien, is it your testimony that on September 10th or 11th, you delegated the project of eliminating part time employees in the Pittsburgh stores to Mr. Holmes?

A. Yes.

Q You did that on September 10th or 11th. When did you delegate the project, what is your testimony? When?

A. This was done in stages with Mr. Holmes. Mr. Holmes, during the latter part of August, was given the dual responsibility with me to come up with replacement people for the Pittsburgh part time people.

JUDGE NACHMAN: Counsel, I guess we're going -- what Counsel was asking you let me point out --

THE WITNESS: I was trying to lead up on September 10th and 11th, it went beyond that scope of just trying to accumulate the people that I wanted him to come into Pittsburgh and handle the termination of the part time people and the orderly transfer of the other people, of the outside people, into Pittsburgh.

JUDGE NACHMAN: Let me put it to you this way. I assume Mr. Holmes was aware of your desire to discuss it with Mr. Dicker before you finally acted?

THE WITNESS: Yes.

JUDGE NACHMAN: Now after your talking with Mr. Dicker, when did you finally tell Mr. Holmes plans of final go ahead and carry them out, the execution?

THE WITNESS: This would have been partially onthe 8th and the 9th.

JUDGE NACHMAN: All right.

THE WITNESS: I believe I discussed it with him on both days.

Q (by Mr. Ladov) What about the 10th or 11th?

A The 10th, I was back in Chicago.

Q Did you discuss it with him that day?

A Yes, in detail.

Q In detail. Would you please look at paragraph 18, on page 4 of your affidavit Mr. Brien? Would you read paragraph 18?

JUDGE NACHMAN: Read it to yourself.

Q (by Mr. Ladov) I'm sorry. Read it to yourself. Is that your testimony here today Mr. Brien?

A Yes.

Q Hadn't you already delegated this project to Mr. Holmes prior to your return to Chicago?

A The delegations that we're talking about here in paragraph 18, is the delegation that Mr. Holmes was to come to Pittsburgh prior to that, prior to that, he had all of the delegations back in Chicago as to the accumulation of people, to the gathering of people to bring in here. And the tenth delegation was that he was to come into Pittsburgh, supersede the authority of Mr. Levine, handle the terminations and the replacements. That was the delegation that happened in paragraph 18.

Q And you had not previously delegated this to Mr. Holmes until you returned to Chicago?

A I had not previously delegated the trip to Pittsburgh, to coming into Pittsburgh and being active, no. That had not been delegated, and that's what the delegation in the paragraph means.

Q You had previously directed him to survey the stores regarding this problem, to talk to managers and employees?

A No. That had to be done in Pittsburgh, so that's a Pittsburgh activity.

Q But you had previously delegated to Mr. Holmes to contact other stores to find available employees?

A Outside of Pittsburgh, yes.

Q You had that done previously?

A Yes.

Q When you spoke to Mr. Holmes on September 10th or 11th, back in Chicago, did he give you a list of the names of employees that he had accumulated?

A He gave me a partial list at that time of people, yes.

Q Who was on that list?

A I can not recall who at this time.

Q You can recall no names?

A I could recall the names perhaps of some of the people who were transferred here into Pittsburgh, but whether or not they appeared on the list at that time, no, I can not recall.

Q Mr. Brien, I'd like to show you what has been introduced into evidence as Respondent's Exhibit 10(d),(e), (f) and (g), and is it your testimony that you examined exhibit 10(d) on or about February 14th, 1975?

A Yes sir.

Q After examining, is it your testimony that after examining 10(d), you wrote on it reduce p.t. help, meaning part time help?

A Yes sir.

Q What then did you do with this?

A Gave it to Mr. Silverhorn.

Q What does the notation reduce part time help mean?

A Reduce part time help.

Q Was this an order to Mr. Silverhorn that on FEbruary 14th, he was to reduce part time help at the Smithfield

Street Store?

A Yes sir.

JUDGE NACHMAN: How would he know how many he was to reduce, one or five or ten, or what?

THE WITNESS: Well, this was a continuing conversation sir, since he knew what our ultimate goal was, he knew what our plans were. This was not an isolated conversation, but one of many conversations. He knew we wanted part time help eliminated.

JUDGE NACHMAN: All of them?

THE WITNESS: Yes sir.

JUDGE NACHMAN: In that connection, turning to exhibit 10(a), which deals with the week ending February 9 --

THE WITNESS: January 9.

JUDGE NACHMAN: January 9, and 10(b), which deals with the week ending January 30, each of those exhibits has a notation eliminate one p.t. salesman?

THE WITNESS: Yes sir.

JUDGE NACHMAN: That's one?

THE WITNESS: Yes.

JUDGE NACHMAN: Now what does that mean? That you had these two together, and these to eliminate two?

THE WITNESS: No. These were continuing notices. These were continuing reminders.

JUDGE NACHMAN: In other words, the two together really mean reduce one part time man?

THE WITNESS: At that time, yes.

JUDGE NACHMAN: All right.

Q (by Mr. Ladov) Back to Mr. Brien 10(e).

A 10(e) now sir?

Q Yes. Is it your testimony that you examinedthis record sometime on or about February 14th?

A Yes sir.

Q And that you wrote the words reduce p.t. on it?

A Yes sir.

Q And then you gave it to Mr. Silverhorn?

A Yes sir.

Q The words reduce p.t. was a direction to Mr. Silverhorn?

A Yes.

Q To in fact, reduce the part time employees?

A Yes.

JUDGE NACHMAN: Well, the word reduce is somewhat misleading, what you mean is eliminate?

THE WITNESS: Well, at this time sir, we were trying to do both. We were trying to have an orderly phasing out at this time, this was back in January and February.

JUDGE NACHMAN: Yes, but the ultimate objective was to eliminate?

THE WITNESS: Yes sir.

Q (by Mr. Ladov) 10(f) Mr. Brien, is it your testimony that you examined this on or about February 14th?

A Yes sir.

Q '75?

A Yes sir.

Q As a result of the examination, you noted the words eliminate two p.t. men?

A Yes.

Q And gave it to Mr. Silverhorn?

A Yes.

Q And that was a direction to Mr. Silverhorn?

A Yes.

Q What was it a direction to do?

A To eliminate two part time men.

Q The same for 10(g) Mr. Brien?

A No. Here it's a little different. Here I use the word eliminate, because if you study the difference in the composition on which -- which one areyou referring to? Did you say 10(e)?

Q No. I am looking for 10(g) right now.

A Okay. 10(g), we had three full time men and two part time men. Now, just a minute now. On 10(g), excuse me, we had three full time men and two part time men, now the one you're referring to on 10(f), we have one, two --

Q I am referring to 10(g) Mr. Brien.

A No, you're asking me to compare 10(f) and 10(g).

Q No. I'm sorry. Now I am going to ask you again. You're mistaken.

You read 10(g) on or about February 13th, 1975?

A Let's back up altogether, okay?

Q Did you read Respondent's Exhibit 10(g) on or about February 13th, 1975?

A Yes.

Q Is it your testimony that as a result of seeing these figures you indicated on this payroll register, the order eliminate two part time men?

A Yes.

Q That you gave this register then to Mr. Silverhorn?

A Yes.

Q All right, would it be accurate Mr. Brien, to say that on or about February 13th, 1975, you directed Mr. Silverhorn to eliminate at least six part time employees. Is that your testimony?

A Yes.

Q But it was never done, right?

A That's correct.

Q Six part time employees, right? At least, as of this week?

A Yes.

Q Mr. Brien, was Mr. Holmes in the Chicago office during the month of April 1975?

A To the best of my recollection he was.

Q Was he in the office during the month of May 1975?

A Yes.

Q June 1975, was he in the Chicago office?

A Again, to the best of my recollection yes.

Q Was he with you in New York?

A Yes, during June, yes.

Q But he was also in Chicago?

A No. He was with me in -- you jagged my memory. He was with me in New York for several weeks during June.

Q Was Mr. Silverhorn with you?

A No.

Q In June, in New York?

A No.

Q Was Mr. Silverhorn in Chicago?

A Was Mr. Silverhorn -- Mr. Silverhorn at that time, yes, he was in Chicago.

Q In June?

A In June, yes.

Q How about April '75?

A Yes.

Q May of '75?

A No. Excuse me. April, no, he was traveling.

Q Traveling?

A Traveling, he was traveling, he was on a merchanise trip.

Q May of '75?

A In May of '75 he took a vacation in May.

Q Was he in the office, June and July of '75, Mr. Silverhorn?

A He was in the office during June, and at that time, he was given different responsibilities, and he was phasing out of the supervisory job, and going into another division. During July, he was tied up the entire month with merchandise meetings.

JUDGE NACHMAN: On this exhibit 10, where it lists the employees, do any of those names include managers?

THE WITNESS: Yes sir.

JUDGE NACHMAN: Exactly taken --

THE WITNESS: It's a very easy key there sir. On the very bottom line there should be -- do you see where it says employee number, right to the right of the employee's name? There's a number that appears there, 99?

JUDGE NACHMAN: Yes.

THE WITNESS: That is the manager in all cases, 99.

JUDGE NACHMAN: I see.

Q (by Mr. Ladov) Mr. Brien, I'm sorry to jump around this like, but directing your attention back to September

8th, 9th, 10th or 11th, whichever day you contend you -- these days on which you discussed the situation with Mr. Holmes, did you ever put these decals in a written form? In a memo?

A No. I don't believe I ever did. I believe they were all verbal.

Q Do you have any memos evidencing your alleged decision to eliminate part time employees during the week of -- ending August 22nd?

A No sir. That was all verbal.

Q All verbal?

A Yes.

Q Did you have any memos Mr. Brien, evidencing your discussions with Mr. Crump and Mr. Saphire?

A No sir. Those were phonecalls.

Q During your discussions in August?

A Those were phonecalls.

MR. LADOV: Your Honor, at this time I would like to offer General Counsel's Exhibit No. 29 into evidence.

JUDGE NACHMAN: Any objection?

MR. DICKER: No objection.

JUDGE NACHMAN: It will be received.

(The document heretofore marked as General Counsel's Exhibit No. 29 was received in evidence.)

Q (by Mr. Ladov) Are the Los Angeles stores organized

Mr. Brien?

A No sir.

Q Are there any part timers in L.A.?

A Yes.

JUDGE NACHMAN: Your answer was yes?

THE WITNESS: Yes.

Q (by Mr. Ladov) Are the Atlanta stores organized?

A No sir.

Q Any part timers in Atlanta?

A Yes.

Q Mr. Brien, when was the first you realized that two/thirds of the Pittsburgh staff were part time?

A The early part of 1975.

Q Early part?

A January, February, in through there.

Q Would you please, I show you what has been introduced as General Counsel's Exhibit No. 29, would you please turn to paragraph 9 Mr. Brien, line 8, and sir if you want to start line 3 Mr. Brien, would you read from line 3, "When I returned to work in mid-August", to the end of that paragraph?

A May I read the whole paragraph please?

Q Yes, please.

A Yes.

Q Is that your testimony today Mr. Brien, regarding when you discovered the two/thirds of the Pittsburgh staff were part time?

A. This isn't accurate here, because this was not intended to be tied into later in the year, because I did have this knowledge early in the year.

Q. So then this statement is not your testimony as of today, is it?

A. That's correct. I did have this knowledge earlier in the year.

Q. You did not discover this in August, when you returned, is that your testimony?

A. No sir, that's correct.

Q. Mr. Brien, you testified this morning that you were transferred often as an employee of Florsheim, is that correct?

A. That's correct.

Q. The first time you were transferred Mr. Brien, what was your position when you were transferred?

A. I was a supervisor in Chicago.

Q. Supervisor, and you were transferred from supervisor in Chicago to what?

A. To a General Manager in San Francisco.

Q. The second time you were transferred in San Francisco to New York, what position were you being transferred to in New York?

A My second transfer was San Francisco to Chicago.

Q I'm sorry.

A I was brought back as a supervisor.

Q Supervisor also?

A Yes.

Q Your next transfer occurred?

A From Chicago to New York.

Q What position did you assume in New York?

A General Manager.

Q Then there was one last transfer from New York to Chicago?

A That's correct.

Q What position did you assume in Chicago?

A General Manager -- National General Manager.

Q National General Manager?

A Yes.

Q That's the transfer you've testified you had only one day notice, right?

A That's correct.

Q Are these transfers that you've described Mr. Brien, you had some knowledge of prior to the actual order to transfer. Is that correct?

A Not all of them sir.

Q Most of them?

A I never stopped and took a poll. I knew about one or two, but not all of them, no.

Q These were all supervisory transfers, that's correct though isn't it?

A How do you mean supervisory?

Q You were a supervisor within the company during all these transfers, at least a supervisor?

A In San Francisco, I went from the National office to actually running and being the general manager, actually operating the store, managing a store.

Q So --

A So within that realm, I was always in the supervisory level, yes.

MR. LADOV: No more questions Your Honor.

JUDGE NACHMAN: I have just a couple clarifying questions.

What hours are these Pittsburgh stores open till, for business? I mean the number a week.

THE WITNESS: I believe the suburban stores open, the shopping center stores open approximately nine or ten o'clock in the morning, until approximately ten at night, or ten o'clock at night I would say. Maybe nine to nine, or ten to nine, something around there.

JUDGE NACHMAN: Approximately sixty hours a week?

THE WITNESS: Yes. The downtown stores are open six days a week, and I believe two nights, are the downtown shopping hours.

JUDGE NACHMAN: These people that were sent in here after September, mid-September, to replace the terminated part time employees, how long did they remain around?

THE WITNESS: How long did they remain around?

JUDGE NACHMAN: Yes.

THE WITNESS: There are four still here sir.

JUDGE NACHMAN: They are full time employees?

THE WITNESS: They are full time employees, yes. One was sent back to Erie to be the manager of that store, he was transferred down here as salesman, he returned to be a manager of a store.

Another gentleman had marital problems, and had to return back to the Philadelphia area, and I forget the reason for having to send back the third person, but there were some problems, personal problems, that necessitated his return.

JUDGE NACHMAN: So four of the seven or eight are still here?

THE WITNESS: Yes sir.

JUDGE NACHMAN: And the others have gone back for one reason or another?

THE WITNESS: Yes.

JUDGE NACHMAN: All right. Any redirect examination?

MR. DICKER: Justafew questions.

REDIRECT EXAMINATION

Q (by Mr. Dicker) Mr. Brien, take a look at General Counsel's Exhibit 29 for a moment, will you?

A Yes.

Q Specifically, at the bottom of the page 2, the last sentence in paragraph 11. Would you explain to us exactly what took place during the two weeks ending August 29, concerning your conversations with Mr. Crump and Mr. -- who is that?

A Saphire.

Q Saphire, as to whether or not you had mentioned to them, specifically the transfer to Pittsburgh?

A This statement, as it appears here, is a statement that I made, it is not intended to be a quote of what I said to either Mr. Crump or to Mr. Saphire. I had discussed, and the reason for my discussion, which I did not disclose to them, was about the transfer of people into Pittsburgh. I asked them earlier for the availability of people who were transfarrable.

Q You didn't specifically mention to them Pittsburgh?

A No sir.

Q Now turn to the next page Mr. Brien, paragraph 12. You testified on direct that you had in Los Angeles, Atlanta, and I don't recall if Philadelphia or not, had eliminated the part time employees over several years ago, and then testified on cross that you presently have part time employees in those three cities.

Would you explain that?

A. We had a substantial reduction from many stores in those cities, are still and have been operating without part time people.

JUDGE NACHMAN: Without part time?

THE WITNESS: Without part time people.

Q (by Mr. Dicker) Was there a point when these areas had no part time people?

A. Yes. There was, for a short period of time.

Q What happened?

A. Then we added part time people back.

Q Thereafter?

A. Yes.

MR. DICKER: That's all I have.

JUDGE NACHMAN: Any further questions?

MR. LADOV: Yes.

RECROSS EXAMINATION

Q (by Mr. Ladov) Mr. Brien, was this period of time that you are referring to August 22nd, 1975, when Philadelphia had no part time employees?

A. Was I referring to that particular date?

Q Yes.

A. No sir.

Q So Philadelphia, on August 22nd, 1975, had part time employees, didn't they?

A Yes sir.

MR. LADOV: No more questions Your HOnor.

JUDGE NACHMAN: All right. You may step down sir.

(Witness excused.)

JUDGE NACHMAN: Call your next witness.

MR. DICKER: I call Mr. Ted Silverhorn.

Whereupon,

TED SILVERHORN

was called as a witness by and on behalf of the Respondent and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (by Mr. Dicker) Mr. Silverhorn, would you please state your full name and your address for the record?

A Ted Louis Silverhorn, 1857 South Washington, Naperville, Illinois.

Q Are you employed by the Florsheim Shoe Shops, Shoe Company?

A Yes I am.

Q How long have you worked for them?

A Approximately four years.

JUDGE NACHMAN: What is your present capacity?

THE WITNESS: I supervise general merchandising for the mens' division.

Q (by Mr. Dicker) Between January of 1975 and August of 1975, whatposition did you hold?

A. Supervisor for the Florsheim Shoe Shops.

Q For what area? Was that an area supervisor?

A Right.

Q For whatarea?

A Boston, Pittsburgh, Philadelphia and Baltimore.

Q How many stores are in that area?

A Forty.

Q What was your duties with respect to that area?

A Totally supervising merchandise of the stores.

Q Where, physically, was your office?

A Chicago, Illinois.

Q You visited the various cities?

A Correct.

Q Now, between -- strike that.

During the period, up to August of 1975, have you ever had any occasion to be involved in the transfer of employees from one location to another?

A Yes.

Q Approximately how many?

A How many employees?

Q Yes.

A Several. I'd say maybe ten, twelve, twenty.

Q Excuse me?

A . It would go as high as twenty, total.

Q Could you tell us how much leetime, or how much notice the employees were given before their transfer?

A Very little.

Q Give us an idea what very little is?

A I'd say as much as -- as little time as twenty-four hours.

Q This was a transfer from one city to another?

A Correct.

Q What was the maximum time, can you remember?

A Probably three days. In one instance I can remember we gava a man to three days.

Q Now Mr. Silverhorn, did there -- to whom do you report -- did you report, between January of '75 and August of '75?

A Lou Brien.

Q Who was the general manager for the Pittsburgh area?

A Howard Levine.

Q Did he report to you?

A Correct.

Q Did there come a time in either the end of '74, the beginning of '75, when you had a conversation with Mr. Brien concerning business in the staffing of Pittsburgh?

A Yes, on several occasions.

Q Approximately when was the first conversation?

A I'd say in January.

Q Of?

A '74. I'm sorry, '75.

Q '75, January of '75?

A Right.

Q Tell us, to the best of your recollection, what was the conversation?

A Well, it pertained primarily to our decrease in business, or our lack of increase in business, totally in the Pittsburgh area.

Q That's what Mr. Brien told you? Tell us to the best of your recollection, what Mr. Brien told you?

A All that our business in the Pittsburgh area was not upto standards, as what we were doing in the rest of the Country. We were running considerably ahead, primarily in my own areas,and that I can recall specifically in Boston, Philadelphia, Baltimore areas, whereas in the Pittsburgh area we were nowhere near the same percentage of increase.

He asked my feelings on why we weren't increasing at the same level, and my personal feeling was at that time was the amount of part time help in the stores.

Q The amount of part time help was --

A Correct.

Q You told that to Mr. Brian?

A Correct.

Q Continue?

A Well, he asked me well, why were we still -- why we had part time help inthe stores in the extensiveness that we did, and I told him that I had discussed it several times with Mr. Levine, and that his comeback to me almost and every occasion was that either full time help was not available in the Pittsburgh, or that it was to his benefit to have part time employees, "in case something happened." When I asked him, how do you mean in case something happened, he said well, if a manager would get sick and an assistant manager and the full time employee in the same store, then he would have someone to open up the store.

Q That is what Mr. Levine told you?

A Correct.

Q Did Mr. -- what else happened during this conversation that you had in January of '75, did you reach any decisions?

A Mr. Brien told me at that time to immediately start eliminating the part time help and to either eliminate or replace some of the full time help, preferably with the part time help that could work full time, to go that route since they were familiar with -- slightly familiar with the stores.

Q What did you do about that?

A I then approached Mr. Levine. Told him that this was what the company wanted. We wanted full time people in the stores. That they would naturally know the stock better, with the constant change of merchandise coming in on almost a daily basis, a part timer can't possibly know the stock nor the system as well as a full timer. Nor is he equipped to handle customers as well as a full time employee is.

JUDGE NACHMAN: Would you construe Mr. Brien's letter as -- or would you just read out the least satisfactory part time employees, or were you to eliminate all part time employees?

THE WITNESS: Not necessarily eliminate. If we could get them to work full time --

JUDGE NACHMAN: Well, suppose you could get them to work full time?

THE WITNESS: That would be fine.

JUDGE NACHMAN: What?

THE WITNESS: That would be perfectly all right. We wanted full time personnel on the floor.

JUDGE NACHMAN: Suppose you couldn't get those people to work full time, were your instructions to eliminate all part time employees, or have some of them read out? What did you understand the instructions to be?

THE WITNESS: I understood where possible to put full time people on the floor, and where it not possible to -- or where we would still need part time help in a large buying suburban store forexample, it may still be necessary to have part time people on the floor. However in the Pittsburgh area, at that time, a large suburban store we didn't have.

JUDGE NACHMAN: Well, as far as Mr. Brien's instructions to you, what did you understand to be the criteria as to when you could keep a part time employee, and when you couldn't keep a part time employee?

THE WITNESS: Well, if you couldn't work full time, my instructions were to put full time people on the floor, onto the sales floor.

JUDGE NACHMAN: In every case?

THE WITNESS: In every store, correct.

JUDGE NACHMAN: So if a man was part time, your instructions were to get rid of him and replace him with a full time employee?

THE WITNESS: My instructions were to approach him with the possibility of working full time first, and if so, immediately put him onto a forty hour week.

Q (by Mr. Dicker) You are talking about January of '75?

A Oh in January, I take that back, no. In January, I was instructed primarily to beginto put full time help on the floor, to see if it would change our volume.

JUDGE NACHMAN: All right. Now what I can't get straight in my mind is, you have a number of part time employees there, your first job was to see if you could get them to work full time?

THE WITNESS: Right.

JUDGE NACHMAN: If they would not work full time, what were you supposed to do with them? Were you to eliminate everyone of them, or were you to keep some, and not others?

THE WITNESS: Well, we would have to keep some at that point, but we would have to also hire full time help.

JUDGE NACHMAN: All right. How many would you keep? What criteria were you to use?

THE WITNESS: Depending onthe size of the store, the volume size of the store. How many it would --

JUDGE NACHMAN: What was the criteria?

THE WITNESS: Well, it's just hard to say. If it's a quarter ofamillion dollar store in volume size, then it would call for a manager, an assistant manager, one full time employee, one -- and possibly, meaning in a suburban store, one part time employee.

JUDGE NACHMAN: Now Mr. Silverhorn, you had-Mr. Brien was your superior?

THE WITNESS: Correct.

JUDGE NACHMAN: He had given you an order, which you considered it necessary to carry out?

THE WITNESS: Right.

JUDGE NACHMAN: What did you deem it necessary to do to carry out this order?

THE WITNESS: To eliminate the part time help.

JUDGE NACHMAN: Entirely?

THE WITNESS: Correct.

JUDGE NACHMAN: All right.

Q (by Mr. Dicker) That was back in January?

A Not in January, no.

Q Let's see whether we can -- in January, what did Mr. Brien tell you to do?

A He told me to begin to put full time help on the floor.

Q Did he tell you -- did he give you any criteria?

A No.

Q Did he tell you to use your own judgment?

A Correct.

Q What did you do about it?

A I immediately notified Howard Levine and told him to start hiring full time help and to replace some of the part time help on the floor.

Q Did Mr. Levine do that?

A No.

Q How many times did you speak, between January and April of 1975, how many times did you speak to Mr. Brien about reduction of part time help in Pittsburgh?

JUDGE NACHMAN: Do you mean Mr. Brien or Mr. Levine?

MR. DICKER: Mr. Brien.

THE WITNESS: On numerous occasions.

Q (by Mr. Dicker) Approximately?

A Twenty. Twenty, Twenty-five times.

Q Twenty. How many times did you speak to Mr. Levine about that?

A Same amount.

Q Same amount?

A Correct.

Q Let me show you exhibits 10(a) through 10(g) in evidence. I ask you whether you recognize them?

A Yes I do.

Q Whose handwriting is on 10(a)?

JUDGE NACHMAN: You are referring only to the legend?

Q (by Mr. Dicker) Handwriting?

A Handwriting, it would be either Mr. Holmes or Mr. Brien's.

Q Do you remember who gaveyou those slips -- strike that.

Did there come a time when you received any of the copies of -- for example, 10(a)?

A On a weekly basis. We have supervisor -- every supervisor gets a copy in the office.

Q Did there come a time when you received a copy of 10(a), with the handwriting on it?

A Every week primarily, during that period from January of '75 all the way through.

Q Fromwhom did you receive a copy with the handwriting on?

A It would either come from Mr. Brien or Mr. Holmes.

Q Mr. Holmes is Mr. Brien's assistant?

A Correct.

Q Will you take a look through 10(a) through 10(g), and tell me whether the same is true for all of those exhibits, that you received them from either Mr. Brien or Mr. Holmes during thatperiod of time with the handwriting on it?

A Yes. Maybe one of them is in my own handwriting.

Q Which one is that?

A Northway Mall.

Q 10(f) may be in your own handwriting?

A Correct.

Q You're not sure?

A No, I am not.

Q But you remember receiving --

JUDGE NACHMAN: Do you mean that you don't know your handwriting?

THE WITNESS: It's -- to eliminate part timehelp is not mine, but the words -- where it's a 2 placedin front of the part time is mine, I think. The number 2 is mine.

Q (by Mr. Dicker) The number 2 may be yours on 10(f)?

MR. LADOV: Excuse me Your Honor. What are we referring to?

MR. DICKER 10(f).

JUDGE NACHMAN: The legend is to eliminate 2 part time men.

Q (by Mr. Dicker) Eliminate 2 p.t. men, is not your handwriting?

A No.

Q But the 2 may have been yours?

A The 2 may have been mine, right. Northway,in particular all the way through thatperiod of time, there were several memos and phone coversations to the manager, Mr. Levine, to eliminate some of the part time help. That store in particular was the lowest volume store at that time, and had the most part time help in it.

Q But with the one exception of the number 2 on 10(f), you received 10(a) through 10(g) approximately on the date on the top of each of those documents, with the handwriting on it?

A Right, within a couple of days after these dates.

Q Now despite the twenty or so conversations you had with Mr. Brien, and the twenty you had with Mr. Levine concerning the elimination of part time help, was there any elimination or reduction of part time help in Pittsburgh?

A From what period of time?

Q January through March?

A No.

Q What about in April?

A No.

Q Did you have any conversations with Mr. Brien about this problem in April of 1975?

A Yes. Again, it was brought to my attention that -- or he brought it to my attention concerning that we had still not eliminated any of the part time help, nor did we staff the Pittsburgh area with full time people up to standards.

Q What did he tell you to do about it?

A In April, it would have been just before my normal supervisor trip, and he told me at that time to discuss it again with Mr. Levine and proceed accordingly and as soon as possible.

Q YOu were out of the office the rest of April?

A Right.

Q Did you have any other conversations with Mr. Brien about that subject?

A No I didn't.

Q What about in May?

A No. In May I was also out of the office.

Q In June?

A No. Not in June.

Q What about in July?

A No. In July I would have been out of the office again in merchandising.

Q You were out of the office in July?

A Right.

Q You were also out of the office in May?

A Right.

Q What about in June, wereyou out ofthe office in June?

A Most of June I was in --

JUDGE NACHMAN: You were in? He said he was out of the office..

THE WITNESS: No, in June I was in the office, May and July I think I was out.

Q (by Mr. Dicker) May and July and most of April. Was Mr. Brien in the office in June?

A No.

MR. LADOV: Objection Your Honor, Mr. Brien's testified.

JUDGE NACHMAN: Well, this witness is giving his testimony.

MR. DICKER: Do you want to stipulate that Mr. Brien was --

MR. LADOV: No I do not.

Q (by Mr. Dicker) Now that brings us to August, do you have --

May I use your calendar?

JUDGE NACHMAN: Will you stipulate that it is accurate?

MR. DICKER: We've used it before Your Honor.

JUDGE NACHMAN: Go ahead.

Q (by Mr. Dicker) Let me show you the calendar of August of '75 and September of '75, did there come a time in August that you spoke to Mr. Brien about the Pittsburgh situation?

A I would say toward the third week in August, yes.

Q Which week is that? The week beginning what day?

A Monday, beginning Monday the 18th.

Q Can you tell us in substance, to the best of your recollection, what that conversation was?

A Mr. Brien instructed me at that time, or called me into his office, and again put forth to me that he noticed that nothing had still been accomplished in the Pittsburgh area as far as placing full time personnel in the stores, and asked me why, and I said I couldn't give him an answer, it was just a situation that we hadn't been able to correct at that time.

Q What did Mr. Brien --

JUDGE NACHMAN: Did you tell him why you were not being able to correct it?

THE WITNESS: My instructions had not been carried out by Mr. Levine.

Q (by Mr. Dicker) What did Mr. Brien say that he was going to do if anything?

A At that time he told me that, he asked me why, what again what Mr. Levine's reasons were, and I told him that his latest reason was that full time help was not available in the Pittsburgh area, and with that he said immediately all right, then fine, you hire the full time people from outside the Pittsburgh area. Notify Mr. Levine, by phone, as soon as possible that we will staff his area with full time people.

Q He said we will staff his area with full time people?

A Right. We will make available to him full time personnel.

Q He told you to notify Mr. Levine of that?

A Right.

Q Did you in fact call Mr. Levine that week?

A Yes I did.

Q Was he there?

A No he wasn't.

Q Did you eventually get in touch with Mr. Levine?

A. Yes.

Q. When?

A. Date wise?

Q. Approximately.

A. I'd say in -- toward the last week in August.

Q. The week beginning what?

A. The 25th.

Q. Some day that week. Do you remember what day it was during the week?

A. I would say toward the middle of the week, probably Wednesday, Tuesday, Wednesday, or Thursday.

Q. Tuesday, Wednesday or Thursday, and what did you tell Mr. Levine when you called him?

A. I told him that there had been acompany decision that full time personnel would be puton the floor in the Pittsburgh area, and again, he first questioned my authority, and second, questioned that it was the right thing to do in the Pittsburgh area with his own particular circumstances. And I said that we had discussed it on several occasions, and it now became a company decision, that we would staff the Pittsburgh stores with full time personnel.

JUDGE NACHMAN: Did Mr. Levine protest this decision?

THE WITNESS: Yes he did.

JUDGE NACHMAN: What did he tell you?

THE WITNESS: That he again didn't feel that Pittsburgh was the right area to put person -- full time personnel, and said that the part time people were better for him. And on several occasions when I pointed out that in other areas of the Country where we had primarily full time personnel in the stores that we were increasing and going ahead.

JUDGE NACHMAN: Did you put him on the carpet about that, saying that look here, I've told you that fifteen, twenty times what the company requires, and you haven't moved a finger, now why?

THE WITNESS: Yes I did, on several occasions. I put him on the carpet, so to speak.

Q (by Mr. Dicker) Mr. Silverhorn, do you know why no action was taken against Mr. Levine?

A. Yes I do.

Q Will you tell us why?

A. We've had several occasions, me and Mr. -- Mr. Brien and myself and other heads of the company on the particular situation in Pittsburgh, and Mr. Levine is related to a higher Florsheim employee.

Q A higher Florsheim employee? Do you know who he's related to?

A. Harold Florsheim.

Q The Harold Florsheim?

A. Yes sir.

Q Do you know his relationship to him?

A I believe it's nephew.

Q Now you told this to Mr. -- you had this conversation with Mr. Levine sometime in the middle of the week of August 25th, is that right?

A Correct.

Q Mr. Silverhorn, when did you first learn about any union activity in the city of Pittsburgh, in the Florsheim stores?

A I'd say the first week in September.

Q From whom did you learn it?

A Mr. Brien.

Q What did Mr. Brien tell you?

A What did he tell me?

Q Yes. What and when?

A I think it was toward the end of the week of the first week in September. He told me that he had -- I believe his words were"had word", that there were union activities in the Pittsburgh area.

JUDGE NACHMAN: Did show you any document at that time? Any papers?

THE WITNESS: No sir, he did not.

Q (by Mr. Dicker) At this time, during September of 1975, was there anything happening to you, personally, in the company concerning your job?

A Yes. I was -- had additional responsibilities added to.

Q Added to?

A Yes.

Q As a matter of fact, at the present time, do you have the job you had back in August of 1975?

A No I don't.

Q You've been eased out of that job all together?

A Correct.

Q Now were you in the city of Pittsburgh on the 9th of September?

A Yes.

Q Before we get to that, when Mr. Brien told you, during the first week of September, about the union activities, did he tell you anything about the decision concerning the --

MR. LADOV: Objection Your Honor. Leading question.

JUDGE NACHMAN: Thereis a leading question in there already.

Q (by MR. Dicker) Mr. Silverhorn, did Mr. Brien tell you anything else at that meeting that he told you about the union activity?

MR. LADOV: Objection. What meeting areyou referring to?

Q (by Mr. Dicker) I asked him when Mr. Brien told him about the union activities for the first time, he was told about it by Mr. Brien sometime in the beginning of September.

JUDGE NACHMAN: It was either the latter part or the first week in September.

MR. DICKER: Yes.

Q (by Mr. Dicker) Did he tell you anything else in that meeting?

A As far as pertaining to my previous instructions, as far as going ahead with placing full time employees on the floor, I was told to continue my efforts to seek out full time employees, yes.

Q You were in Pittsburgh on September 9th?

A Yes.

Q Did there come a time when you had a conversation with a Mr. Schneider?

A Yes.

Q Was Mr. Schneider an employee of Florsheim?

A Yes he is.

Q Where did --

JUDGE NACHMAN: He is or was?

THE WITNESS: He is, as far as I know.

Q (by Mr. Dicker) Can you tell us the -- where did you have this conversation?

A At the 200 Fifth Avenue store.

Q What time of the day?

A I'd say in the morning.

Q Who was present besides you and Mr. Schneider?

A During our conversation, no one.

Q Would you tell us the conversation, to the best of your recollection?

A My job at that time was primarily concerned with merchandise, and I went to the stockroom, as I do on any visit to any store, to see what merchandise is in the store, if they need fill ins or whatever, and Jim Schneider was, at that time, in the stockroom and as a casual statement I asked him what was going on in the store.

Q What did he say?

A He, at that time, put to me, I guess you know about the union.

Q What did you say?

A My answer was that I had received some word concerning a union. But that -- I didn't put too much on it.

JUDGE NACHMAN: Is this what you said to him?

THE WITNESS: Correct.

Q (by Mr. Dicker) What did he say then, if anything?

A His statement to me was well, he said we are going to have a union in Pittsburgh.

Q Did you reply? Give us the whole conversation.

A I replied to him that -- I said, well, it seems that you feel that,some belligerency toward the company. I said if you have a personal problem, why don't you tell me about it, and his comment to me was that it wasn't only a personal problem, but everyone felt that they weren't making enough money, and that the insurance benefit wasn't up to standard, and I said well, do you know what your insurance benfits are, and I said I believe you're getting married, or at that time you had just gotten married, and he said no I don't. I said well, as far as concerning the dollars, I says, to my recollection, at this time you're making about ninety to a hundred dollars a week more than you were six months ago. Now do you feel that that's unfair, and he said no, but that it wasn't enough, andmy comment was, I said possibly you should check around and see if other people in the Pittsburgh areas are making -- have received a hundred dollars in raises over the past year in one week.

That was basically the entire conversation. Except I left him by saying that if you have any more problems, you know, please contact me if I -- if you feel that I can be of service to you, and in a personal way.

Q That was the end of the conversation?

A Right.

Q Now what about that same day, did you have a conversation with a Mr. O'Neil?

A Yes.

Q Who is Mr. O'Neil?

A He is an employee at South Hills.

Q When did you have a conversation with him? That day, with Mr. O'Neil?

A I would say in the afternoon.

Q In the afternoon?

A The date?

JUDGE NACHMAN: Can you fix the date?

Q (by Mr. Dicker) Was it the same day as the conversation with --

A Yes. The same day as with Schneider. I was making the same -- my rounds to the other stores.

Q I think you said that was September 9th?

A 9th or 10th.

Q You had this conversation with Mr. O'Neil in the afternoon. Where?

A At the Florsheim Shoe Shop in South Hills Village.

Q Who else, if anyone, was present?

A No one.

Q Tell us about that conversation, to the best ofyour recollection?

A You mean present during the conversation or --

Q Yes. Present during the conversation?

A No one, just myself and Terry O'Neil.

Q Tell us the conversation?

A Again, I was looking through the stock and Terry approached me and said I suppose you know that -- about the union activity in the Pittsburgh stores. I said again, that I had heard some word about it. And he said well, I just want you to know that I'm not in favor of it at this. I said why is that, and he said well, I don't feel that they would -- be of that much service to me.

I said well, do you have any grievances toward the company, doyou feel that you would be doing better, or do you have some personal problems, and he said no, not at all. He also said that, he said I signed a card, but that I was asking for it back. I said well, you know, it's your prerogative, whateveryou feel is right for you.

JUDGE NACHMAN: Who approached the subject of the union, you or Mr. O'Neil?

THE WITNESS: Mr. O'Neil.

MR. DICKER: I have no further questions.

JUDGE NACHMAN: Do you wish to cross examine?

MR. LADOV: Yes Your Honor.

JUDGE NACHMAN: Let's take about a fifteen minute recess.

Off the record.

(A short recess was taken.)

JUDGE NACHMAN: On the record.

All right Mr. Ladov, proceed with your cross examination.

CROSS EXAMINATION

Q (by Mr. Ladov) Mr. Silverhorn, you've testified that you, yourself, have directed employees to transfer from one city to another, is that correct?

A Correct.

Q When did this occur?

A Baltimore.

Q When?

A In '75.

Q In '75, when?

A I believe around February. I'd say February or March.

Q How much notice -- how many employees -- strike that.

How many employees were transferred in Baltimore in '75?

A I believe we brought in two or three.

Q From where?

A One from -- two from the Cleveland area and one, Canton, and one -- the third one from Philadelphia.

Q Did you notify these employees of their transfer?

A Yes.

Q It's your testimony that the notification to these employees was near the time they actually were transferred?

A Correct. In one instance, well, we brought the general manager -- orthe manager at the time in Canton, in the Baltimore area, his comment was how fast do you want me there and my comment back to him, as in most cases, was yesterday.

Q That was a manager?

A Right.

Q Mr. Silverhorn, did you ever discuss your testimony with anyone prior to today?

A Total testimony?

Q Yes.

A No, not totally.

Q Who did you discuss your testimony with?

A As far as -- in what sense? What particular phase?

Q My question is not phasing sir, it's who? Who did you discuss your testimony with?

A I reviewed dates and so on with Mr. Brien.

Q Did you discuss your testimony today with anyone?

A No.

Q No one?

A No.

Q Did you speak with Mr. Lyon during Mr. Brien's testimony?

A With who?

Q Mr. Lyon?

A No.

Q During his testimony -- no.

A No.

Q During Mr. Brien's testimony?

A No.

Q Did you see Mr. Lyon during Mr. Brien's testimony?

A I believe he walked through , yes.

Q Walked through where?

A The outer office.

Q Where did he go?

A I believe to the restroom.

Q You didn't go with him?

A I went out into the hall, yes.

Q Did you mention your testimony to him?

A No I did not.

Q Did he mention Mr. Brien's testimony to you?

A Not at that time, no.

Q When did he mention it to you?

A Over lunch. He made the statement that -- I asked him, because the outer door was open, I asked him what the statement was, I forget if I used or excitement or what, and he said that they may not be finished today as they planned, because I have a flight later on this evening.

Q While you and Mr. -- while Mr. Brien was testifying, did you and Mr. Holmes go to the mens' room with Mr. Lyon?

A. Mr. Holmes I believe went to the restroom. I went downstairs and I got a candybar.

Q. Is it your testimony that you were first directed by Mr. Brien to deal with the part time problem in Pittsburgh in January? Is that your testimony?

A. As early as January.

Q. As early as January?

A. There were occasions in December, the previous year, that it was brought up, but it was put off due to Christmas.

Q. Did Mr. Brien tell you in January that he wantad all part time employees eliminated in Pittsburgh stores?

A. To begin the elimination, right.

Q. To begin?

A. To begin, not necessarily eliminate part time employees, but to staff full time employees.

Q. He told you this inJanuary. That's your testimony?

A. Right.

Q. You told Mr. Levine this?

A. Yes I did.

Q. How many times?

A. Several.

Q. Is it your testimony that you told --

JUDGE NACHMAN: Did you say several?

THE WITNESS: Yes.

Q You testified earlier that youspoke with Mr. Levine at least twenty times regarding this matter. Is that true?

A I said twenty to twenty-five,yes.

Q Is that true?

A True.

Q When did these twenty to twenty-five conversations occur?

A I would say every week, as we get a weekly print out of the sales, and it shows the number of personnel in each store and the number of hours worked.

Q During the month of January?

A January, February, March, April, May, all the way through.

Q Now you've testified that you've had various -- you made various memos of these orders to Mr. Levine, is that true?

A The memos and payrolls of print outs themselves.

Q What memos are you referring to?

A Memos that I would either dictate to him over the telephone, and I would put in memo form, in actual writing.

Q And send it to Mr. Levine?

A Correct.

Q How many of these did you make?

A As far as memos themselves go, written memos, I'd say eight or ten.

Q They were sent to Mr. Levine?

A True, correct.

Q During the month of January?

A January, I don't believe there was any memos. Prior to my trip in April, there would have been memos, yes. Prior to that --

JUDGE NACHMAN: These were written memos?

THE WITNESS: Written memos. Prior to that it was primarily done by phone.

Q (by Mr. Ladov) So it's your testimony that there were approximately eight or nine written memos, written from you to Mr. Levine?

A Either to Mr. Levine or to the managers, themselves, yes.

Q During the month --

A During the -- toward the latter part of -- before, before or right after my trip in April, I quit going through Mr. Levine, and started going directly to the managers.

Q So it's your testimony that there were approximately eight or nine memos written between the months of January and March to Mr. Levine from yourself, right, and that these memos state that the company had decided to eliminate all part time employees?

A Stated that we wanted more full time personnel on the floor, and that would mean eliminating of some part time help,yes. Whether it was part time employee became full time or whether we put in -- or hired a new full time employee, it would elimination of someone, some place.

Q On or about February 13th, 1975 Mr. Silverhorn, did Mr. Brien direct you to order Mr. Levine to eliminate at least six part time employees inthe Pittsburgh stores?

A I don't recall.

JUDGE NACHMAN: Do you mean that you don't recall the number, or you don't recall whether he gave you any order about --

THE WITNESS: I don't recall an explicit order to six personnel to be eliminated, no.

JUDGE NACHMAN: You just don't recall the number?

THE WITNESS: No. The date doesn't sound familiar.

Q (by MR. Ladov) When was the first time Mr. Silverhorn -- strike that.

Did you ever learn Mr. Silverhorn, that Mr. Brien had ordered the elimination of all part time employees in the Pittsburgh stores?

A Yes. He spoke to me as far -- he told me in August that we would eliminate part time people and replace them with full time people.

Q In August?

A Right.

Q Is that the first time you ever heard that order?

A. No, it was not.

Q. When was the first time?

A. The first time was going back as far as January to begin to put full time people on the floor.

Q. When was the first time? What is your testimony, when is the first time Mr. Brien directed you, or told you, that all part time employees in Pittsburgh stores would be eliminated?

A. I'd say in -- all part time employees?

Q. Yes.

A. In August I think. Toward the third week in August.

Q. When who got back from vacation? Mr. Brien got back from vacation right?

A. Right.

Q. He called you into his office, right?

A. Yes.

Q. Is it your testimony that he asked you what's the story about Pittsburgh?

A. No. The statement was I see that nothing has been done as far as putting full time people on the floor in Pittsburgh.

Q. He knew that already, right?

A. Right.

Q. What did you say ?

A. I said that no, no we had not been able to hire full time people.

Q He asked you why?

A Right.

Q What did you say?

A I said that the previous or the final answer that I had from Mr. Levine, that there was no "no full time help available in the Pittsburgh area."

Q Mr. Levine had told you that the week ending August 22nd?

A No. That was the last word I had from him, during my April trip.

Q During your April trip?

A Right.

Q You had not talked to Mr. Levine since April regarding this matter?

A I talked to him again in May regarding it, and after that I was pretty well, -- I had already started on a different job. So I had dual jobs and didn't really apply a lot of time to the Pittsburgh area.

Q Did Mr. Brien tell you how he knew in August that nothing had been inthe Pittsburgh stores?

A I assume he --

Q Did he tell you how he knew?

A Just from payroll registers, yes. When I walked into hisoffice he threw payroll registers on it and said again, I see we still have part time personnel in Pittsburgh, I said yes we do. He said why hasn't it been eliminated, I said I just haven't been able to get it across to Mr. Levine that we need full time help rather than part timehelp.

Q You stated that you talked to individual store managers about this problem in April?

A Yes.

Q Which store managers?

A Northway Mall in particular.

Q What is the manager's name?

A Jim Holleran, previous to that, it would have been Roy Rosenberry.

Q What did you tell Mr. Holleran?

A I told him that his excessive part time help had to be cutting into his sales, and as a matter of fact Mr. Holleran --

Q There's no question. And you wrote memos, is it your testimony that you wrote memos to the individual managers regarding this matter?

A Yes it is. Primarily Northway Mall.

Q Mr. Brien directed you to start dealing with the individual managers?

A No, I took it upon myself.

Q You met with Mr. Brien the week of August 13th, is it your testimony that you told him that you had been informed by Mr. Levine that there were no full time help available?

A True, correct.

Q Is it your testimony that Mr. Levine had informed you that there were no full time help available sometime in May?

A April or May, right.

Q April or May?

A Yes.

Q He had not informed you since that time, had he?

A No.

Q Did Mr. Brien ask you that?

A What? If he had informed me?

Q Yes. Did Mr. Brien ask you when was the last time thatyou talked to Mr. Levine?

A Yes he did. And I said I believe the last time would have been in May, before I took on additional responsibilities.

Q At that time, did Mr. Brien direct you to contact Levine and ask him if he had any full time people available?

A He told me to contact Mr. Levine and tell him that we would find him full time people and to see what his response would be, yes.

Q When did you contact Mr. Levine?

A Around the 2-- the last week in August, 25th or 26th, right in there.

Q The week ending August 29th?

A Right. It would have been the beginning of theweek, because I had contacted him and -- I tried to contact him during the previous week, but he was not available.

Q Had -- is it your testimony that you contactedhim the week ending August 29th? Mr. Levine.

A The week of the 25th, yes.

Q What did you tell him?

A I told him that, if he was not available to find full time personnel, we would -- it would be in our instructions, or company policy decision, that we would make full time personnel available to him.

Q What did he tell you?

A He said, well, he said that's a decision then and I guess that we'll have to do it, and said I don't feel that it's right.

Q How long has Mr. Levine been regional manager of the Pittsburgh stores?

A I would have to make an estimate and say at least five years.

Q How long have you been employed by Florsheim?

A Almost four years.

Q In the four yearsthat you've been employed, havepart time employees always worked in the Pittsburgh stores?

A For the total four years I couldn't say. I was not supervisor in the entire four years.

Q You've mentioned again Mr. Silverhorn, that you spoke with Mr. Levine in the first, approximately four months of the year, almost twenty twenty-five times about this problem, right?

A. Correct. At least in the first five months, yes. Figuring four weeks to a month, figuring one payroll per week, four weeks in a month, times five months would be around twenty weeks, or twenty times that I contacted him.

Q No part timers were ever eliminated from January to August, isn't that true Mr. Silverhorn, in Pittsburgh?

A. To my recollection, I couldn't say definitely whether there was or not. I believe in Northway Mall we had been able to eliminate one.

Q Did Mr. Levine ever, during the twenty or twenty-five conversations, ever tell you that we have eliminated part timers?

A. No he did not.

Q In each one of the calls or conversations that you had with Mr. Levine, Mr. Silverhorn, did you make a direct order for him to eliminate, start to eliminate the part time employees?

A. Yes.

Q What was his response?

A. That he would see what he could do.

Q Then the next time you would call --

A His comment would be that he was unable to do that, and again, he felt that he needed the part time people.

Q Each time he would say that he couldn't do it?

A Right. In particular, his response to me would be was -- when I asked him why he needed all the part time help his response would be that "in case something happens."

Q You were here in April of 1975?

A Either April or May, latter part of April or May.

Q You met with Mr. Levine?

A Yes.

Q Did you discuss the elimination of part time employees?

A Among other things, yes.

Q Did Mr. Levine give you a response?

A Right at that time he told me there was no -- that he -- there was no full time help available in the Pittsburgh area.

Q Did you contact any of the transfers personally?

A No.

Q Did you contact any of the area managers regarding the transfers personally?

A General managers, yes.

Q Who did you contact?

A Mr. Crump.

Q When?

A I'd say the second week in -- I believe the second time I contacted him was the second week inSeptember, to see if he had been able to come up with any full time people.

Q When was the first time you had contacted him?

A Toward the middle or the third week in August. Philadelphia was where Mr. Crump is. Philadelphia area was also under my supervision.

Q Did you contact any other area managers regarding the matter of transfers to Pittsburgh?

A No, not directly.

Q To the best of your knowledge, were you the only one who had contacted Mr. Crump regarding this matter?

A I believe as a follow up, Mr. Holmes probably would have contacted him, yes. Again, I was into two different positions at the time.

Q Did Mr. Crump, in the first conversation in August, give you any names of employees that would transfer?

A Not specific names. Made mention of the fact that in two of the suburban stores, a Grand Run in the Springfield Mall, it's a fairly new store, he may have some --

Q Did he give you any names Mr. Silverhorn?

A Not specific names, no.

Q Mr. Silverhorn, I show you what has been introduced and in evidence as Respondent's Exhibit 10(a). Have you ever seen that before Mr. Silverhorn?

A Yes.

Q Where did you -- when did you see it?

A I'd say on or about, this is January 9th, so give a couple of days, the 10th or 11th of January.

Q What does he writing on that -- who did it come from? Who did you get it from?

A It comes from the office of Mr. Lou Brien.

Q Mr. Brien, and he gives it to you?

A Either himself, or at that time his assistant, Paul Holmes.

Q These words, what does that say on there?

A Eliminate one part time salesman.

JUDGE NACHMAN: Do you know whose handwriting that is?

THE WITNESS: No. I can't say specifically. It would either be -- have to be Mr. Brien or Mr. Holmes.

JUDGE NACHMAN: Well, if you don't know, don't guess. If you know, tell us.

THE WITNESS: No. I don't know specifically.

Q (by Mr. Ladov) When you got that, what has been marked as Respondent's exhibit 10(a), what did you do with it?

A I would have called Mr. Levine and again, he mentioned the fact that we were overstaffed on part time people.

JUDGE NACHMAN: The question is what did you do, not what you might have done.

THE WITNESS: I can't recall specifically what I did with this particular one.

Q (by Mr. Ladov) Did you eliminate one part time employee?

A I don't believe so, no.

Q Did you call Mr. Levine and direct him to eliminate one part time employee?

A Yes.

Q Was one part time employee eliminated?

A I don't believe so, no.

Q So is it your testimony that when you get these payroll registers, and they have writing on them, is that a direct order to you?

A Yes.

Q And that's a direct order for you to carry out?

A Correct, through the general manager.

Q And that if you carry these out -- did you carry -- I'm sorry. Strike that.

I show you what has been introduced as Respondent's Exhibit No. 10(d), it's in evidence.

MR. DICKER: 10(d)?

MR. LADOV: 10(d).

Q (by Mr. Ladov) Can you identify that?

A. Yes.

Q. Whose handwriting is that?

A. I don't know.

Q. Was that ever given to you? Thatexhibit?

A. Yes. I would say again from, give a couple of days after the last date on -- where it says base salary week ended 2/13, it would be around the 14th or 15th that I would receive it.

Q. You would get it approximately the 14th or 15th?

A. Right.

Q. What does the writing say?

A. Reduce part time help.

Q. Did you affectuate that order?

A. I passed it along.

Q. Orally?

A. On this occasion, I would have to say probably orally.

Q. I show you what has been marked as General Counsel's -- I'm sorry, Respondent's -- what has been introduced as Respondent's Exhibit 10(e). Can you identify that?

A. Yes.

Q. What is that?

A. This is a payroll register again.

Q. For where?

A. For Monroeville.

Q For what period?

A Week ending 2/13.

Q What does it say on it?

A Reduce part time , p.t.

Q What did you take that to mean?

A Reduce part time personnel.

Q One part time employee?

A Minimum of one, probably two.

Q Probably two. What about Respondent's Exhibit 10(d).

JUDGE NACHMAN: Did you say 10(b)?

MR. LADOV: 10(d),

Q (by Mr. Ladov) Where it says reduce part time, what do you take that to mean?

A Looking at the number of part time people, again minimum of two.

Q I show you Respondent's 10(f). Can you identify that?

A Yes.

Q What is it?

A Payroll register for week ending February 13th.

Q What store?

A Northway Center.

Q Are there any directions to you on that?

A Eliminate two part time men.

Q That's written to you?

A Eliminate part time men, I believe the 2 is my own.

Q The 2 is your own? You think?

A Right.

Q Did you --

A I would have to see the file and a couple of weeks payrolls to see if there was any -- this happens to be Northway, which again was one store that I had concentrated on the most, to see if we eliminated any.

Q I show you General Counsel's Exhibit 10(g) -- or Respondent's Exhibit 10(g), canyou identify that?

A Yes. This is a payroll register, week ending February 13.

Q For what store?

A South Hills.

Q What does it say on there?

A Eliminate 2 p.t. men.

Q Is that your writing?

A No.

Q Whose writing is it?

A I couldn't say positively.

Q Do you take -- did you in February, on or about February 14th, when you saw these four exhibits, did you take them to be direct orders to you?

A Yes.

Q Is it your testimony that you saw these four exhibits on or about February 14th?

A. Yes sir.

Q And that the wording, the notations, are direct orders for you to take action?

A. Yes sir.

Q Do you recall what action you took on February, on or about February 14th?

A. Specifically no. It would have to be either a telephone conversation or a memo.

Q That would be the form of the action. What action did you order on those days?

A. To eliminate part time personnel, men.

Q How many?

A. On this particular one, it would be two.

JUDGE NACHMAN: Who did you give the order to?

THE WITNESS: Mr. Levine.

Q (by Mr. Ladov) Aren't there four for the -- one for each store, for four of the stores?

A. Yes.

Q On the same date?

A. Right.

Q So did you call Mr. Levine four times?

A. No. I would have received all four registers at the same time.

Q Is it -- did you act on it?

A Yes.

Q What would your action be?

A To notify Mr. Levine to eliminate part time people.

Q How many part time people?

A It would depend on the store, the number of part time people in the store,

Q Then you don't take these notations to be direct orders, do you?

A Yes I do.

Q So then did you, on or about February 14th, direct Mr. Levine to eliminate two part time employees at this --

A South Hills Village.

Q South Hills Village store, and two more part time employees at the North way Center Mall store?

A South Hills Village, yes.

Q Yes what?

A Yes I instructed him to eliminate two part time people.

Q When?

A On or about the 14th of February.

Q Two part time people in each store?

A In this specific one, two in South Hills Village.

Q What about Northway?

A Northway Center I would have instructed more part time people to be eliminated.

Q What about the Smithfield Street store?

A At 501, I would have instructed two part time people to be eliminated.

Q In the Monroeville Mall store?

A Two.

Q Two?

A Two.

Q So is it your testimony that you received these payroll registers on or about February 14th?

A Right.

Q That they were direct orders to you to direct Mr. Levine to eliminate at least six part time employees at those four stores?

JUDGE NACHMAN: The question has been asked and answered at least a half a dozen times.

THE WITNESS: Yes.

Q (by Mr. Ladov) And did you do that?

MR. DICKER: Objection.

JUDGE NACHMAN: We can not waste all day with one witness.

MR. LADOV: One question. One more Your Honor.

Mark this as General Counsel's number 30.

(The document above-referred to was marked General Counsel's Exhibit No. 30 for identification.)

Q (by Mr. Ladov) Mr. Silverhorn, I show you what has been marked as General Counsel's Exhibit No. 30, can you identify it please?

A This is a letter to Mr. Levine.

Q Did you write this letter?

JUDGE NACHMAN: It doesn't matter whether he wrote it or not, did he sign it?

Q (by Mr. Ladov) Did you sign it?

A Can I read it?

Q Yes.

A Yes, I signed it.

Q Did you write it and sign it on the data indicated, on February 14th, 1975?

A Excuse me. Would you repeat the question?

Q Was that the date that you wrote this letter, February 14, 1975?

A Yes it is.

Q Did you send it to Mr. Levine?

A Yes.

MR. LADOV: I offer General Counsel's Exhibit No. 30 into evidence.

JUDGE NACHMAN: Any objection?

MR. DICKER: No objection.

JUDGE NACHMAN: G.C. 30 will be received.

(The document heretofore marked as General Counsel's Exhibit No. 30 was received in evidence.)

MR. LADOV: No more questions Your Honor.

JUDGE NACHMAN: Any redirect?

MR. DICKER: None Your Honor.

JUDGE NACHMAN: You may step down.

(Witness excused.)

JUDGE NACHMAN: Call your next witness.

MR. DICKER: I call Mr. Holmes.

Whereupon,

PAUL R. HOLMES

was called as a witness by and on behalf of the Respondent and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (by Mr. Dicker) Do you want to state your full name for the record sir?

A Paul R. Holmes.

Q Your address?

A 1439 North Green Meadows Boulevard, Streamwood, Illinois

Q What is your present position?

A I am a regional sales manager.

Q For whom?

A The wholesale divison of the Florsheim Shoe Company.

Q BAck -- was there a time in your career when you were administrative assistant to Mr. Lou Brien?

A That's correct.

Q When was that?

A That was through December 1st of last year.

JUDGE NACHMAN: '75?

THE WITNESS: Yes sir.

Q (by Mr. Dicker) Starting when Mr. Holmes?

A About three and a half years ago, four years ago.

Q Mr. Holmes, did there come a time when you had any conversations with Mr. Brien concerning Pittsburgh?

A Yes sir.

Q About when was the first time?

A Well, I would have to say -- probably early 1975.

Q How early in '75?

A Well, probably January, February, perhaps March, probably January.

Q Tell us the conversation?

A Well, some of the things that I would do involve, along with Mr. Brien's productivity of our stores, and frankly we were not happy with the performance of our stores in Pittsburgh, and he had brought that to my attention, or in a conversation we went into that subject.

Q He had brought it to your attention. What did he say? Do you recall?

A Not specifically, generally.

Q In substance?

A I beg your pardon?

Q In substance.

A Well, the fact that the performance in Pittsburgh had not kept pace with other stores in other cities around the Country, and frankly he was very disappointed about that.

Q Did he discuss with you the remedy of the situation?

A Yes. He had talked about cutting back on the part time staff in the stores as one means, his other means would be employ --

Q Now how many times had you -- did you have this conversation with Mr. Brien more than once during the early part of 1975?

A I would say yes.

Q Approximately how many times?

A Several.

Q Did he give you any instructions about what to do about that situation?

A Well, as I say normally the way I get --

JUDGE NACHMAN: Don't tell us normally. The question is did he give you any instructions what you were to do about that situation?

THE WITNESS: Yes. Basically start reducing the part time staff.

Q (by MR. Dicker) What were you specifically going to do during the early part of '75?

A Well, I instructed the supervisor to reduce salaries and get more productivity out of the existing people and go to a full time employee.

Q Who was the supervisor?

A Mr. Silverhorn.

Q Let me show you what's been marked as exhibits for identification 10(h) and 10(i).

JUDGE NACHMAN: The last two.

Q (by Mr. Dicker) Let's start with 10(h), can you identify that document?

A This is a weekly payroll register for the Florsheim Shoe Shops, specifically this would be the South Hills store.

Q When was the first time you saw that sir?

A I would've seen this probably March the 14th, 15th.

Q March?

A This is a March document you have here.

Q No.

A 3 is March.

Q Under what circumstances would you have seen that one?

A Well, I review all payroll registers sometimes for Mr. Brien, most of the time in his absence, and I would review it for productivity on a store by store basis.

JUDGE NACHMAN: Does this come to you as a matter of course?

THE WITNESS: Yes sir. These are done every week.

Q (by Mr. Dicker) There's a word written on the left hand side reduce?

A Yes. That's my writi[illegible]

Q That's your handwriting?

A Yes sir.

Q The other numbers on the exhibit are not part of the exhibit Your Honor, the written numbers.

JUDGE NACHMAN: Okay.

Q (by Mr. Dicker) Mr. Holmes, when did you write the word reduce on that document?

A I would have to say probably March 14th or 15th.

Q What did you do with that?

A This then goes to the supervisor, Mr. Holleran.

Q It would go to Mr. Silverhorn?

A Mr. Silverhorn, pardon me, yes.

Q What does the word reduce mean?

A Well, inthis particular instance we have less productivity for the store, we were telling him to reduce the number of people in hours worked in that store, principally part time people.

MR. DICKER: I offer 10(h).

JUDGE NACHMAN: Now the last name on that, Posenberry, is the manager?

THE WITNESS: Yes sir.

JUDGE NACHMAN: Do you mean to reduce his hours?

THE WITNESS: Not particularly.

JUDGE NACHMAN: Now the next three names on the bottom are all full time people?

THE WITNESS: That's correct.

JUDGE NACHMAN: So the only name on there that is a part time employee would be Bittner?

THE WITNESS: That's correct. James Bittner.

JUDGE NACHMAN: Now what kind of instructions did you have in respect to Bittner?

THE WITNESS: Perhaps to reduce him entirely from the store, or reduce his number of hours working.

JUDGE NACHMAN: Well, now you wrote it on there, what did you want done?

THE WITNESS: I don't recall sir.

JUDGE NACHMAN: Go ahead.

MR. DICKER: I offer 10(h).

JUDGE NACHMAN: Any objection?

MR. LADOV: Yes, on the writing Your Honor.

MR. DICKER: Which writing?

MR. LADOV: The scratches all over it.

JUDGE NACHMAN: That is not a part of the exhibit.

MR. DICKER: The only written writing on the part of the exhibit is the word reduce, the exclamation point.

MR. LADOV: No objection.

JUDGE NACHMAN: 10(h) will be received.

(The document heretofore marked as Respondent's Exhibit No. 10(h) was received in evidence.)

Q (by Mr. Dicker) Look at 10(i) for identification. About when would you have received that document?

A Probably about, again, two or three days after the date, which would be April 4th or 5th.

Q Is that your handwriting, reduce part time hours, p.t. means part time?

A That's correct.

Q When would you have put that on?

A Probably on April 4th or 5th.

Q Then what would you have done with this document 10(i)?

A This would have again gone to the supervisor, Mr. Silverhorn.

MR. DICKER: I offer 10(i).

MR. LADOV: None of the circles, you're not offering as a part of the exhibit?

MR. DICKER: No. The only writing --

JUDGE NACHMAN: Or the checkmarks or anything like that, none of that is part of the exhibit?

MR. DICKER: No your Honor.

MR. LADOV: No objection.

JUDGE NACHMAN: 10(i) will be received.

(The document heretofore marked as Respondent's Exhibit No. 10(i) was received in evidence.)

JUDGE NACHMAN: I am not certain that the record shows that I have received 10(a) through 10(g), and it is received.

MR. DICKER: Thank you.

Q (by Mr. Dicker) Now Mr. Holmes, let me direct your attention to August of 1975. Would you tell us whether you have had any conversations with Mr. Brien in August of 1975 concerning the Pittsburgh situation?

A Yes I did. Actually it was late in August.

Q When was the first conversation? There is a calendar there in front of you, it may help you.

A I believe it would be the week of the 22nd.

Q The week --

A The week ending with Friday the 22nd.

Q The week beginning the 18th?

A The week beginning the 18th, that's correct.

Q Tell us what that conversation was?

A Well, I had basically again gone over the matter that we had not been very happy with out productivity in the stores in Pittsburgh. I believe I even interrupted a meeting with Mr. Silverhorn, and he was discussing this, and I came in at the tag end. Generally what he was asking was the availability of people for transfer and relocation into

Pittsburgh.

Q Who is he?

A Mr. Brien.

Q He was asking who?

A Me.

Q What did you say?

A I mentioned that I would get into it. Obviously, I didn't have any fast answers for him, and that we would discuss that later on.

Q Did you ask him why he wanted to know the availability of people for transfer to Pittsburgh?

A Yes. He was talking about replacing the part time people with full time salesmen.

Q Was there anything else in this conversation that you can recall?

A No sir.

Q Then what did you do?

A A part of my normal routine is to go around and try to determine where we have extra people that are experienced and available to make a move into other responsibilities.

Q Did you do that?

A Yes I did.

Q What managers -- what areas did you contact?

A Well, we usually contact the areas where we have our greatest number of stores, which will be Cleveland, as an example, Cincinnati, Milwaukee, and certain -- Chicago of course, perhaps Minneapolis, and I think those were the principle cities. I believe Houston.

Q What did you ask the various managers inthose cities?

A. If they had full time, experienced people for relocation.

Q Did you tell them where?

A. Yes I did, Pittsburgh.

Q Now this was during the week of the 18th of August?

A. Yes sir.

Q Did you report back to Mr. Brien about this?

A. I believe I had, but it might have been the next week. Sometimes you don't get answers on it right away.

Q Did you --

JUDGE NACHMAN: Did you say it was the latter part of the week that you made these calls?

THE WITNESS: I would have to believe it was during that week. I honestly don't recall.

Q (by Mr. Dicker) During the week of the 18th?

A. Yes.

Q You reported back to Mr. Brien when?

A. I would have to say probably within the next week.

Q Why did you report to him?

A. Why or what?

Q What, I'm sorry.

A The fact that we had not as many people as we might have liked to have had available for this particular move.

Q Do you remember how many you had available?

A I believe I had two.

Q Did you contact the managers in Philadelphia and in New York?

A I did.

Q Did they have anyone available?

A They did, yes.

Q More than two?

A More than two.

Q Do you know whether anyone else contacted the managers in Philadelphia and in New York?

A I believe Mr. Brien may have spoken with those people.

Q During the last two weeks in August, did Mr. Brien mention anything to you about union activity in Pittsburgh?

A No sir.

Q Did anyone mention anything to youabout union activity in Pittsburgh?

A No sir.

Q When did you first learn about the union activity in Pittsburgh?

A I believe that would be after Labor Day. I believe it was the 2nd of --

Q September?

A Yes. It would be September the 2nd.

Q Mr. Holmes, did there come a time when Mr. Brien gave you specific instructions concerning full time or part time people in Pittsburgh?

A Yes there was. I believe it was on September the 8th, I believe.

Q On September the 8th?

A Yes.

Q Was that in person or by phone?

A By phone.

Q What did he tell you?

A That he wanted me to go into Pittsburgh and replace all the part time people with full timers.

JUDGE NACHMAN: When did he tell you this?

THE WITNESS: I believe this was September 8th.

Q (by Mr. Dicker) Did you talk to Mr. Brien subsequent to that about the full timers and part timers?

A Other than when he came back into the office , I believe

Q Which would have been when?

A Probably the 10th.

Q What was that conversation then?

A Well, the fact that we were again dissatisfied with the productivity and that we were going to move to replace -- to actually just staff our stores with full time people.

Q Did he give you any specific instructions on how you were going to do that?

MR. LADOV: Objection Your Honor. He's leading the witness.

JUDGE NACHMAN: Go ahead.

Q (by Mr. Dicker) Did he give you any specific instructions about how to go about doing that?

A Well, just generally in the way that we normally would is to offer the existing part time people the opportunity to work full time.

Q Did Mr. Brien tell you that?

A Yes sir.

Q When did you first go -- strike that.

After that conversation on or about September 8th with Mr. Brien, what did you do next?

A I believe I would have planned a trip into Pittsburgh the following Monday.

JUDGE NACHMAN: Don't tell us what you believe you would have done. The question is what did you do?

Q (by Mr. Dicker) What did you do?

A I planned a trip into Pittsburgh, the week of the 15th.

Q Did you in fact go into Pittsburgh on the 15th of September?

A Yes I did, that's correct.

Q Tell us to the best of your recollection what you did beginning September 15th?

A Beginning September 15th, I'm not sure, on the morning of the 16th we had a managers' meeting.

Q With whom?

A With all of the store managers. Five in number, at which time we discussed the reason I was there.

Q Tell us what was said?

A Well, the fact that we had made plans to go ahead and staff our stores with full time salesmen, and that I was there basically to coordinate that activity. That they were to -- I would visit all the stores personally. In addition to which they would talk to the people that worked for them on a part time basis and determine, through asking whether or not they would be available to work a full time schedule in our stores, and that we were planning a subsequent meeting that following Thursday, which would have been September the 18th.

Q After they asked the -- determined whether people could or could not work, what were they to do with this information if anything?

A Report it back to me, personally.

Q Now during this week, did you take any steps concerning full time employment of employees who were out of the city of Pittsburgh?

A I had already had one person from Chicago enroute prior to that to arrive, I believe on Tuesday the 16th, and I had been in contact with an employee in our Erie, Pennsylvania store on the 15th.

Q That's just two.

A I also had been in touch with Mr. Crump and Mr. Saphire regarding the people that they would have available for transfer.

Q Anyone else besides Crump and Saphire?

A At that point, no. I had already exhausted the other people that I had been in contact with.

Q Did you visit the stores yourself?

A I began visiting the stores that afternoon, the 16th.

Q Was there in fact a managers meeting on the 18th, as you described?

A That's correct.

Q What happened then?

A I asked each manager to advise me of those people that they had spoken to, other than those that I had talked with, and to let me know whether or not they were available to work a full time schedule.

Q What were you told?

A That there were no employees on a part time basis that could work regular full time hours, except possibly Corrigan.

Q Except the possibility of --

A Robert Corrigan.

Q Now at this point in time, how many full time employees had you arranged from outside of the city of Pittsburgh to come into the city of Pittsburgh?

A I believe seven.

Q Now what did you do about Mr. Corrigan?

JUDGE NACHMAN: About who?

MR. DICKER: Corrigan, he was a part time employee that possibly could work full time.

THE WITNESS: Well, I had spoken to him earlier and talked about --

Q (by Mr. Dicker) When was earlier?

A Tuesday the 16th. And I had talked to him, and for that matter, other people in the store, about the probability of relocation to one of our other stores, specifically downtown, the downtown store. It was reported to me on the 18th by Mr. Holleran, the manager of the Northway store, that Mr. Corrigan in fact might be able to arrange a schedule that would provide him the ability to work a regular full time schedule. And he gave me a list of the hours he was available.

Q Let me show you General Counsel's Exhibit 26.

I ask you whether that's the document that Mr. Corrigan gave you, I think you said on the 18th?

A Yes it is.

Q That was the hours he said he was available?

A Right.

Q By the way, was there any conversation either on the 16th or the 18th with Mr. Corrigan, concerning his working in the downtown store rather than in the suburban store?

A He had asked, I had talked about the probability of relocating him. He had asked about staying at Northway, as he was familiar with the people in the area. I had indicated that I probably wanted to see him in the downtown store for some additional experience.

At the time he was carrying a college schedule.

Q Did he indicate to you that he preferred to stay at a different location?

A Other than Northway? No sir, not that I recall.

Q I mean at Northway?

A At Northway, yes.

Q Did you explain to him the reason you wanted him to stay downtown, you wanted him to come downtown?

A Yes sir.

Q What were those reasons?

A Well, I wanted to establish a more mature salesman in that store.

Q Which store?

A Northway store.

Q Now after the meeting, did you give Mr. Corrigan your answer after he gave you his schedule, G.C. 26?

A The only thing that I mentioned was that I would review his schedule, that he should continue the hours as assigned to him at the Northway store, and that I would be back in touch with him regarding myability to reconsider his schedule.

Q Did you review the hours?

A Yes sir.

Q What hours is the store open -- the downtown store open onMonday?

A 9:30 to 5:30.

Q It closes at 5:30?

A 5:30, that's correct.

Q What about on Tuesday?

A I'm sorry. Monday is a night, it's till 9:00. 9:30 till 9:00.

Q On Monday?

A Yes. And Tuesday is 9:30 to 5:30. Wednesday is 9:30 to 5:30. Thursday is an evening hours it's 9:00. Friday is 9:30 to 5:30. And the same is true on Saturday.

Q So that except for the two evenings,that the store closes at 5:30, is that right?

A That's correct.

Q Had you reached a conclusion concerning the ability of Mr. Corrigan into the downtown stores hours?

A That's correct. I didn't feel that his schedule was flexible for the hours of the store.

Q So what did you do about that?

A I called Mr. Holleran the following morning, since I hadn't covered all of that information that day, and instructed that Mr. Corrigan be terminated.

Q Was Mr. Corrigan terminated?

A Yes sir.

Q Now other than Mr. Corrigan, was there any other salesman who would -- indicated -- was there any report to you of any other salesman, part time salesman, who was available for full time work?

A No sir.

Q What if anything did you then tell the managers?

A To terminate their part time people that evening.

Q Did you tell them anything about availability of full time people?

A That I would assign full time people to their stores, that's correct.

Q Now Mr. Holmes, do you a Mr. Foreman?

A Yes. He is a former employee of the 501 Smithfield Store.

Q Did there come a time when you had a conversation with Mr. Foreman?

A Yes there was.

Q When was that?

A That would have been, I believe, Thursday, the 18th, by telephone.

Q By telephone?

A Yes.

Q Tell us what the conversation was?

A Mr. Brower had originally been speaking him with about terminating him that evening, and incidentally it was raining, and I had suggested that they try to reach the people by phone, to save them the trip into the store and preclude the weather. Mr. Foreman indicated that he was dissatisfied with Mr. Brower's comments, and would like to speak to me about it. At which time, I took the phone from Mr. Brower and told Mr. Foreman that, as he had indicated he was unable to work a full time schedule, he was carrying a full time job in the bookstore in the local college, that in fact we were terminating him.

Q What did he say?

A Well, he felt that this was very unfair, and this was basically being done as a move contrary to his ability, but rather because of his involvement in the union.

Q What did you respond to that?

A That it was absolutely incorrect.

Q Now did you have a conversation with a Mr. Paranzino?

A Yes I did. Mr. Paranzino was a former porter, also at the 501 Smithfield Store.

Q When did you have that conversation?

A That was also on Thursday the 18th.

Q Where?

A In the basement Conference Room of the store.

Q Was anyone else present?

A Mr. Brower.

Q Tell us what that conversation was?

A Yes. Mr. Brower told Mr. Paranzino that as we were making every effort to insure the productivity of our stores and our people, that generally we would not -- in order to keep a porter in the store, and as it was a luxury we couldn't afford, and that therefore we were terminating him that evening.

Q Anything else in that conversation?

A No sir, not that I recall.

Q What about Mr. Halliday? Did you have a conversation with Mr. Halliday?

A Yes I did, by telephone.

Q When?

A I believe that would have been the Thursday, the 18th also.

Q What time?

A Mid-afternoon.

Q Tell us about that -- tell us what you remember about the conversation?

A. I had called him, as Mr. Holleran requested, because of Mr. Halliday's comments regarding the reason he was terminated. I spoke to Mr. Halliday, I believe that I mentioned to him that I was calling regarding his request, he proceeded to discuss the reasons he was being terminated rather than his ability, but rather it was the company's move to retaliate against the unionmovement in the city, and I believe my comment to him was the fact that that was untrue and I'm sorry he felt that way.

He raised other questions, but I don't know if they are relevant.

Q. Did you understand Mr. Holmes, that any of these employees were being terminated because of their union activities?

A. No sir, they were not.

MR. LADOV: Objection Your Honor. It's just conclusions and an opinion.

JUDGE NACHMAN: It comes rather late doesn't it?

MR. LADOV: He's been asking these through and through Your Honor. I can certainly move to have it stricken, can't I?

JUDGE NACHMAN: Well, I will still reserve the right to find to the contrary, if the evidence requires it.

Q. (by Mr. Dicker) Mr. Holmes, are you familiar with a

Mr. Macko?

A Yes I am.

Q Were there some conversations with Mr. Macko concerning his transfer from one location, one store to another?

A Yes sir, there was.

Q Would you tell us about those conversations?

A On Tuesday the 16th, I have visited the stores, and I believe that was the time that I met Macko at the store, at the Monroeville, and had indicated that I had very definite plans of moving him to the downtown store where Mr. Levine operates, which is 200 Fifth Avenue. I asked him basically, just general -- to get his general feelings on the matter. I left it at that, and asked him, I believe to come down to the Conference Room on, I believe it was Wednesday the 17th. At which time he indicated that he really didn't feel that that move would best suit his goals and what he wanted to do. I told him I was sorry to hear that, and that I would get back to him later, which I did so I believe on Thursday the 18th. At which time I told Mr. Macko that he was being transferred, affective Friday the 19th, to 200 Fifth store.

Q During these conversations, did Mr. Macko offer you any reasons as to why he didnot want to be transferred?

A He indicated that they were private and personal, and I guess I should mention that I honored his request, I didn't mention it to anybody as far as that was concerned.

Q He had requested you not to mention about --

A We did not discuss it at the time, that's correct.

Q Did you say anything to him about how to solve those problems, at that time or any other time?

A Well, I had -- we had a long conversation on Thursday the 18th, and basically I told him that I had similar experiences myself, nothing personally, but in my own family, and frankly I felt that that would not be anything that he couldn't cope with and shouldn't be determinant to his move.

Q Was there any discussion during these -- as to earnings or money?

A I just indicated he'd make substantially more money in the new job.

Q What did he say to that?

A I don't recall his specific answer, other than the fact that that was, you know, that would be acceptable. He wanted to make more money. He wasn't making very much money where he was.

Q Do you know what Mr. Macko's earnings were for the period immediately prior to his transfer?

A Yes I do.

Q For the period after his transfer?

A Yes sir I do.

Q What are they?

A As far as --

Q The period, do you know what his earnings were from January 1 to the point of his transfer?

A Yes sir. About a hundred and twenty-seven dollars.

Q A week?

A A week.

Q What have they been since his transfer?

A About a hundred and fifty-nine dollars.

Q How do you know that?

A I made some notes before coming down.

Q Notes from what?

A From the payroll records in the office.

MR. LADOV: Objection Your Honor. May we see the payroll records?

JUDGE NACHMAN: The payroll records are the best evidence.

MR. DICKER: No further questions.

MR. LADOV: I have a motion to strike that last -- any response regarding Mr. Macko's earnings.

JUDGE NACHMAN: Well, I have ruled that the payroll records would be the best evidence. If they are produced I will withdraw my ruling.

MR. DICKER: Mr. Macko also testified on examination Your Honor.

MR. LADOV: Objection Your Honor.

MR. DICKER: He did. There might be an objection, but he did.

JUDGE NACHMAN: Whatever the record shows, it shows.

MR. DICKER: I'm sorry. There is one -- just a few more questions.

JUDGE NACHMAN: All right, go ahead.

Q (by Mr. Dicker) In the course ofyour duties Mr. Holmes, were you ever involved with the transfer of people?

A. Yes sir.

Q From one city to another city?

A. Yes sir.

Q How long have you been involved in the transfer of people from one city to another?

A. About seven years.

Q About how many transfers have you been involved in in the past seven years, approximately?

A. I'd say probably to a hundred.

Q What was the length of time, from the time the individual was notified, to the time the individual was transferred?

A. Generally, I would say probably a week, or maybe less, most often it would be less.

MR. DICKER: Thank you. That's all.

JUDGE NACHMAN: A week at most?

THE WITNESS: Not most sir, but generally.

JUDGE NACHMAN: Generally, it would be a weeks notice?

THE WITNESS: Yes sir.

JUDGE NACHMAN: Go ahead.

CROSS EXAMINATION

Q (by MR. Ladov) Mr. Holmes, when did you contact other area managers regarding the transferring of employees to Pittsburgh?

A The week beginning August the 18th.

Q Who did you contact that week?

A The general manager in Cleveland, Cincinnati, Milwaukee, Houston, Chicago, also NewYork and Philadelphia.

Q Did you find any employees from those calls that week?

A I believe two.

Q Who?

A Perhaps three. One person eventually didn't make the move with us.

Q Who please?

A Bill Freeman.

Q Who else? Where -- I'm sorry. Where was Mr. Freeman from?

A Chicago. And Harold Fredericks was another I believe.

that was the two that I mentioned.

The Erie name came to me following -- [illegible] later that week.

Q Later what week?

A The week of the 25th.

Q Did you talk to -- who was the Erie person, do you recall?

A The manager of the salesmen that we would eventually need.

Q Who did you talk to?

A The manager Mr. Faukner.

Q What did you ask Mr. Faukner?

A Based upon information that I had had from Mr. Silverhorn, we had an experienced person in Erie, that had expressed an interest in moving with the company, and would be available for us to consider for moving. Subsequently, he was moved.

Q What were you told?

A I just mentioned what I was told.

Q No you didn't, let's go over this again in Erie, do you recall who was the manager in Erie, please?

A John Faukner.

MR. DICKER: Objection.

Q (By Mr. Ladov) Who --

JUDGE NACHMAN: I don't think it is necessary to repeat all of this. He called the manager in Erie, to get the name of someone who might be interested in a move, now what was the name of that person?

THE WITNESS: The person that I called was John Faukner, the manager.

JUDGE NACHMAN: All right, who was it that was supposed to -- or who might move down?

THE WITNESS: Mr. Christensen, Darrell Christensen.

Q (By Mr. Ladov) Did you talk with Mr. Christensen?

A I don't believe so.

Q Did Mr. Faukner tell you that Mr. Christensen was willing and able to move?

A Yes, sir.

Q Did he tall you this prior to August 29th?

A I would say, yes, sir.

Q Did you contact -- did you learn from any other area managers of employees that were willing and able to move to Pittsburgh prior to August 29th?

A Yes, sir, Harold Fredericks in Chicago for one.

Q Anyone else?

A No, sir.

JUDGE NACHMAN: I would like to ask you this, were you listing people who might be interested in moving, or were you soliciting people, that you were going to tell to move, whether they wanted to or not?

THE WITNESS: I think it was basically the fact that we were soliciting, one of the things -- if I may, one of the things I was, was also director of recruiting training for the retail division, and in August, we had opened a lot of retail stores.

JUDGE HACHMAN: Well, however that may be, the man told you he wasn't interested, and that closed the matter as far as you were concerned?

THE WITNESS: It probably would.

Q (By Mr. Ladov) Mr. Holmes is it your testimony that on September 8th, 1975, Mr. Brien called you from Pittsburgh, he was in Pittsburgh, and called you in Chicago?

A I believe sir, that would be the date.

Q Did he, during this phone conversation, direct you to come to Pittsburgh, and make the move and make the transfers?

A Yes, sir.

Q Did you talk to him on September 9th?

A That was Tuesday, I believe he was coming back I would say, I would say I talked to him for sure on the 10th, I don't believe the 9th.

Q Did he call you September 9th?

A I don't recall.

Q Did you speak with him September 10th, Mr. Brien?

A Yes.

Q In Chicago?

A Yes.

Q Did he direct you to come to Pittsburgh on September 10th, and effectuate the transfers?

A Well, he just reaffirmed what we had discussed on the 8th.

Q He had already directed you to come to Pittsburgh on the 8th, is that your testimony?

A Yes, sir.

Q You drove to Pittsburgh on September 15th, Mr. Holmes?

A That's correct.

Q Had you ever been to Pittsburgh before?

A I don't believe so.

Q Was there a managers' meeting on the 16th?

A That's correct.

Q And is it your testimony that at this managers' meeting, you first informed the managers of your intention to effectuate the elimination of part time employees?

A That's correct.

Q And did you at that time, on September 16th, direct the managers, to fire the part time employees?

A No, sir, I did not.

Q You did not?

A I asked them to find out who was available to work a full time schedule, no orders were given on the 16th to fire anyone.

Q You did not order anyone fired on the 16th?

A I don't recall, sir, no.

Q Do you recall directing them to find out who was available to work full time?

A Yes, sir.

JUDGE NACHMAN: Was it your intention, if some of the employees indicate their desire and ability to work full time, they would be kept on?

THE WITNESS: Absolutely.

Q (By Mr. Ladov) On September 18th, is it your testimony that on that day, you met again with all the managers?

A Yes, sir.

Q And is it your testimony that on September 18th, you found out that except for Robert Corrigan, no part time employees would be willing or able to work full time?

A Yes, sir.

Q And on September 18th, did you direct the managers to discharge all the part time employees?

A Yes, with the exception of Corrigan.

Q Is it your testimony that it was a two step process, that you directed the managers first, to find out, what the part time employees' status is, and then two days later, you directed them to fire them, is that your testimony?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: I would say yes.

Q (By Mr. Ladov) Why did you ask Mr. Corrigan to come downtown?

A Sir, I didn't ask him to come down, he wanted to see me, he came down of his own free will.

Q I'm sorry.

Mr. Holmes, -- well, did you wish Mr. Corrigan to relocate, to a downtown store?

A We had two young -- in my opinion, two young people working at the Northway Store, along with a young manager, and I felt that the best way to insure productivity was a more mature and experienced salesman, and I felt that he would best serve our needs in the downtown store.

Q Was Mr. Corrigan a good salesman?

A He implied that he was, yes.

Q Would his record substantiate that implication?

A It was acceptable, yes.

Q I show you what has been introduced as General Counsel's exhibit number 26, Mr. Holmes that's the schedule that Mr. Corrigan gave to you, isn't it?

A That's correct.

Q According to the schedule, could Mr. Corrigan have worked full time at the Northway Mall Store?

A Yes, sir.

Q But it was of your opinion that he was unable to work full time at a downtown store?

A Absolutely.

Q How old is Mr. Christensen?

A Mr. Christensen is about twenty-seven, twenty-eight.

Q How old is Mr. Koritsky?

A I would say Mr. Koritsky is twenty-one, twenty-two.

Q How old is Mr. Corrigan?

A Twenty-one, twenty-two.

Q Did Mr. Koritsky ever inform you during the time that you were in Pittsburgh, in mid-September, that he was willing and able to transfer to a downtown store?

A This was at the same time that I had a discussion with Robert Corrigan, for the same matter, yes, sir, that's correct.

Q He did inform you of that?

A Yes, that's correct.

Q You never transferred Mr. Koritsky to a downtown store, did you?

A No,sir, I did not.

Q Do you contend that Mr. Christensen is a mature salesman, that you put into the Northway store?

A Yes, I do.

Q And you left Mr. Koritsky, in the Northway store?

A Yes, that's correct.

Q Where did you get Mr. Macko to transfer?

A 200 5th Street, which is Mr. Levine's store.

Q Was he to replace anyone?

A. Yes, sir.

Q Who?

A Mr. Schneider.

Q Mr. Schneider?

A That's correct, James Schneider.

Q Where were you going to put Mr. Schneider?

A 501 Smithfield.

Q Did Mr. Macko tell you that his father was an alcoholic?

A That's correct.

Q Did he tell you on September 16th, that he did not wish to transfer?

A That's correct -- no, I don't believe so, I believe it was the 17th, he informed us.

Q The 17th?

A Yes.

Q What was your response to Mr. Macko's personal problem?

A Well, that I had had a similar experience, and I could understand why he felt the way he did, but it could be overcome.

Q Did you order him transferred on September 18th?

A That's correct.

Q On September 13th, did he indicate to you, that he really did not want this transfer?

A That's correct.

Q And you ordered it anyway?

A Yes, sir.

Q As of September 13th, you had put in seven new employees in the stores in Pittsburgh?

A Yes, sir.

Q Mr. Brien ever direct you to discharge any porters that were employed at the stores?

A I would have to say the answer to that would be yes, that's just a routine thing, when you are working on an expense production program, the answer would be yes.

Q On an expense?

A Expense and productivity.

Q When did he order you to discharge porters?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

MR. DICKER: There's only one porter, you overruled it, but it is an erroneous question.

JUDGE NACHMAN: Well, here may be something --

MR. DICKER: There's no testimony to the contrary, your Honor, I'm sorry.

Q (By Mr. Ladov) When were you told to discharge the porter?

A. That would have been the week of the 15th, beginning September 15th, Monday.

JUDGE NACHMAN: Is there a porter at each one of your Pittsburgh stores?

THE WITNESS: There is one porter in the 501 Smithfield store.

JUDGE NACHMAN: No porters at the other stores?

THE WITNESS: No, sir.

Q (By Mr. Ladov) When did Mr. Brien direct you to discharge the porter?

A. I don't know that he actually directed me, it would be just part of our discussions, I would have to say, if I was directed in fact, it would have been the week of the 15th.

Q The week of September 15th?

A. That's correct.

Q Are you aware that the porter -- I'm sorry, strike that.

When you arrived in Pittsburgh in mid-September, and you spoke with Mr. Paranzino on September 18th, is that correct?

Were you aware at that time, that he had been hired on August 25th, 1975?

A. I believe I was.

Q You spoke with Mr. Paranzino personally?

A Yes, sir.

Q Did you ask him if he could -- is it your testimony that you asked him if he could work full time?

A He wasn't given that option as a porter, he was not a part time salesman, therefore, I didn't feel there was any need to use him as a part of the selling force.

Q So then you terminated him on September 18th?

A That's correct.

Q You said that you spoke with Mr. Foreman?

A That's correct.

Q By phone?

A Yes, sir.

Q How many times?

A Once.

Q On September 18th?

A Yes, sir.

Q Did you at this time ask him, if he could work full time?

A I don't believe that I did, no, sir.

Q Did Mr. Brower?

A Mr. Brower assured me that he had, yes.

Q On September 18th?

A Prior to September 18th.

Q Did he tell you when?

A This if you recall, we had a manager's meeting that morning.

Q I recall what you have testified to, did he tell you when he asked Mr. Foreman?

A I don't recall.

Q You don't recall?

A No.

Q Did Mr. Brower -- prior to your calling Mr. Foreman on September 18th, did Mr. Brower tell you that he had spoken to Mr. Foreman?

A At the meeting of the 13th, I was told, yes.

Q Mr. Brower told you that?

A Yes, sir.

Q Did he tell you when?

A I don't recall.

Q When did you come to Pittsburgh, Mr. Holmes?

A The 15th.

Q What time?

A In the evening.

Q When did you have your managers' meeting?

A The morning of the 16th.

Q Did Mr. Brower on the 18th, tell you that he had called Mr. Foreman, previously, to ask him if he could work full time?

A Mr. Foreman did work nights in that store, I believe that he would have worked Monday night, and probably an afternoon too.

Q If I tell you, Mr. Foreman worked Monday night and Thursday night, would that help your recollection, Mr. Holmes, did Mr. Brower tell you when he asked Mr. Foreman if he could work full time?

A He did not.

Q You didn't inform the managers themselves until September 16th, to ask the employees, right, if they could work full time?

A That's correct.

Q Mr. Holmes, you mentioned a cost production plan, during cross examination.

A I believe I had.

Q And that is, your mission to Pittsburgh was to effectuate this cost production plan?

A No, sir, that's not what I said.

MR. DICKER: Objection.

Q (By Mr. Ladov) Who first told you of a cost production plan?

A Who first told me?

Q Yes.

A I think that was probably a misstatement, I don't -- what I'm saying is, that I don't believe that I came in on a cost production program.

Q Let's go back Mr. Holmes, to the end of August, is it correct in saying that your testimony, that you have testified, that as of the end of August, you had only two employees, who were willing and able to transfer to Pittsburgh?

A Yes, sir.

Q And only one of those in fact transferred?

A Yes, sir.

Q And that one was in the Chicago training school?

A Yes, sir.

Q And that he had not been assigned anywhere, prior to his assignment to Pittsburgh?

A I think the misunderstanding is that that was what I had been working on, Mr. Brien had to be in touch with other parts of the -- you know, other parts ofthe country, and what I had specifically been assigned to do, those were the results received.

Q Were these contacts in August, by phone?

A Yes, sir, with the exception perhaps, of the Chicago manager, he's in our office, quite frequently.

Q Did you prepare any memos, as to these contacts in August of the area managers?

A No, sir.

Q Was Mr. Macko considered the assistant manager at the Monroeville store?

A Yes, sir.

Q And was Mr. Schneider considered the assistant manager at the 5th Avenue store?

A. That's correct.

Q And, it's your feeling that Mr. Schneider needed to be replaced?

A. That's correct.

Q Was Mr. Koritsky also an assistant manager at the Northway store?

A. That's correct.

Q Did you ever discuss your testimony with anyone prior to today, Mr. Holmes?

A. Did I ever discuss my testimony, I have an affidavit that I signed, if that's what you mean.

Q Did you discuss your testimony with anyone today?

A. Not that I recall.

Q You didn't discuss your testimony with Mr. Lyons at all today?

A. I don't believe so.

Q Did you discuss Mr. Brien's testimony with Mr. Lyons today?

A. Not that I recall sir.

Q During the morning session, did Mr. Lyons walk out of the court room, Mr. Holmes?

A. That's correct.

Q Did you walk with him?

A. Yes, sir.

Q Did you go to the men's room?

A At lunch, I believe we went to lunch.

Q Went to lunch?

A That's correct.

Q Did Mr. Brien come with you then?

A No, sir.

Q You said that you transferred approximately two hundred people in your career, is that accurate?

A I believe that's reasonable.

Q Is your testimony that generally, these people have been given a week's notice, is that your testimony?

A I would say that's correct.

Q Do you mean that they were first informed that they would be transferred, a week before they actually went?

A Most of the time, that would be an opportune situation.

Q First informed?

A That's correct.

Q Is that your testimony?

A In most cases, yes.

Q Do you have memorandums to substantiate the approximate two hundred transfers that you've made?

A No, sir.

Q When you came to Pittsburgh, you were aware of the employees' attempts to organize a union here, weren't you?

A I was aware of it, through hearsay of Mr. Brien.

MR. LADOV: No more questions, your Honor.

JUDGE NACHMAN: Any redirect?

MR. DICKER: No redirect.

JUDGE NACHMAN: Okay, you may step down, sir.

(Witness excused.)

JUDGE NACHMAN: Does the Respondent have any further witnesses?

MR. DICKER: We have one further witness, your Honor.

JUDGE NACHMAN: Off the record.

(Discussion off the record.)

JUDGE NACHMAN: On the record.

Let the record show that we are adjourned until ten o'clock tomorrow morning, in this room.

Off the record.

(Whereupon at 5:10 o'clock p.m., the hearing in the above matter was adjourned, to reconvene on Wednesday, March 24, 1976, at the same place.)

BEFORE THE NATIONAL LABOR RELATIONS BOARD

SIXTH REGION

- -

In the Matter of: :

THE FLORSHEIM SHOE STORE COMPANY : Case number
OF PITTSBURGH, EPNNSYLVANIA, AND :
THE FLORSHEIM SHOE STORE COMPANY : 6-CA-8591
OF MONROEVILLE, PENNSYLVANIA :

and :

RETAIL STORE EMPLOYEES UNION LOCAL 1407 :
as chartered by RETAIL CLERKS INTERNATIONAL :
ASSOCIATION, AFL-CIO :

- -

National Labor Relations Board,
Hearing Room #1,
Porter Building,
601 Grant Street,
Pittsburgh, Pennsylvania.
March 24, 1976.

Met pursuant to adjournment at 10:00 o'clock a.m.

BEFORE:

HONORABLE JOSEPH I. NACHMAN, ADMINISTRATIVE LAW JUDGE.

APPEARANCES:

MARVIN DICKER, Esq., Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue, New York,
New York 10022, appearing on
behalf of the Respondent.

E. DONALD LADOV, Esq., 601 Grant Street, 10th Floor,
and Porter Building, Pittsburgh,
AMY S. KRIEGER, Esq. Pennsylvania 15219, appearing as
Counsel for the General Counsel.

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INDEX

WITNESSES	DIRECT	CROSS	REDIRECT	RECROSS
Respondent's:				
HOWARD LEVINE	733	757		

EXHIBITS

NUMBERS	FOR IDENTIFICATION	IN EVIDENCE
Respondent's:		
11(a)		731
11(b)		731
9		732
General Counsel's:		
31	777	790

PROCEEDINGS

JUDGE NACHMAN: On the record.

MR. DICKER: Your Honor, with respect to Rejected Exhibits 11(a) and 11(b), at the close of the hearing yesterday afternoon, we supplied to Counsel for the General Counsel certain basic company records.

He has informed me this morning that he has reviewed those records with respect to 11(a) and 11(b), and that he withdraws his objection as to the authenticity of the figures on those documents.

JUDGE NACHMAN: You are withdrawing your objection that these exhibits are not the best evidence?

MR. LADOV: That I am also, that they accurately reflect the best evidence of the records.

JUDGE NACHMAN: It is your purposes that you are not questioning that these figures correctly reflect what the basic records show?

MR. LADOV: That's correct Your Honor.

JUDGE NACHMAN: All right.

MR. DICKER: Reserves all of his other objections as relates to relevancy.

JUDGE NACHMAN: Well, another objection that he had, that he didn't have the use of the basic records for the purpose of cross examination. Now, I take it that is withdrawn?

MR. LADOV: Yes Your Honor, as to these figures, yes.

JUDGE NACHMAN: All right. Now the question of mechanics, I will therefore revoke my ruling to Rejected Exhibits, Respondent's Exhibits 11(a) and 11(b).

Pursuant to the representation made by Counsel for the General Counsel, I now receive each of those exhibits in evidence.

(The documents heretofore marked as Respondent's Exhibits Nos. 11(a) and 11(b) were received in evidence.)

MR. DICKER: Thank you Your Honor.

Now with respect to one additional exhibit, Respondent's Exhibit 9, I think it has been marked as Rejected Exhibit 10.

JUDGE NACHMAN: Correct.

MR. DICKER: That with the exception of clarifying the exhibit to indicate that the comparison figures on the bottom of Pittsburgh Total Increase - 1974, represents the comparison between 1973 and 1974. And National Total Increase, 8.9%, represents again a comparison between the 1973 and 1974 figures.

That with that correction, or explanation of the exhibit, again Counsel has seen the basic company records, and withdraws his objection as to the accuracy of the figures.

JUDGE NACHMAN: Well, let me -- am I to understand that this exhibit R-9, which is now Rejected 10, I am to --

the testimony will be that the figure for 1973 sales is the figure for 1974 sales?

MR. DICKER: Correct.

JUDGE NACHMAN: On the bottom of Pittsburgh Total Increase - 1974, gives figures of .6%. That means it was an increase .6% for Pittsburgh for '74.

MR. DICKER: Yes Your Honor.

JUDGE NACHMAN: That the total National Increase for that period was 8.9%?

MR.DICKER: Yes Your Honor. And the National Figures, which we consider to be somewhat secret, have been shown to Mr. Ladov, and he has reviewed them.

JUDGE NACHMAN: I take it then you withdraw your objection? That Exhibit R-9 is not the best evidence, you do not question the accuracy of these figures on your ability to use the basic records for the purposes of cross examination, and now agree that Exhibit R-9 may be received.

Is that correct?

MR. LADOV: Correct Your Honor.

JUDGE NACHMAN: All right then, I will withdraw my ruling Rejecting Exhibit 9, and I will now receive it in evidence.

(The document heretofore marked as Respondent's Exhibit No. 9 was received in evidence.)

JUDGE NACHMAN: Anything else?

MR. DICKER: We have one other witness Your HOnor, and that is all that I am going to put on.

JUDGE NACHMAN: Nothing else of a clarifying nature?

MR. DICKER: No.

MR. LADOV: For the record Your Honor, I, regarding the three exhibits, I, in no way withdraw my objection to relevancy, and we will deal with that subject further in the record, at weight.

JUDGE NACHMAN: You are admitting that these figures are the correct figures?

MR. LADOV: That's all, yes. That's right.

JUDGE NACHMAN: All right.

Call your next witness.

MR. DICKER: I call Mr. Levine.

Whereupon,

HOWARD LEVINE

was called as a witness by and on behalf of the Respondent and having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (by Mr. Dicker) Would you please state your name for the record sir?

A Howard Levine.

Q Your address?

A 5401 Forbes Avenue, Pittsburgh, 15217.

Q Mr. Levine, are you employed by Florsheim Shoe Shops?

A I am.

Q In what capacity?

A I am the area manager for the Florsheim Shoe Shops.

Q What area does that cover sir?

A That covers the Greater Pittsburgh Metropolitan Area.

Q How many stores?

A There are five.

Q How long have you held thatposition Mr. Levine?

A About fourteen years.

Q Mr. Levine, going back to the period January 1975 through August of 1975, to whom did you report?

A I reported to Mr. Ted Silverhorn.

Q What was his position?

A He was the district supervisor, area supervisor.

JUDGE NACHMAN: I didn't catch the name?

THE WITNESS: Silverhorn.

Q (by Mr. Dicker) Mr. Levine, how frequently did you talk to Mr. Silverhorn during this period of time, January through August?

A Very frequently.

JUDGE NACHMAN: Meaning what?

THE WITNESS: A few times a week, several times.

Q (by Mr. Dicker) Let me direct your attention to the staffing of the stores. Did Mr. Silverhorn, during this period of time, January 1975 through August of '75, talk to you about the staffing of the stores?

A. Yes he did.

Q. When would be the first time, do you know?

A. It was certainly, it could have been in 1974. But certainly the first part of '75, and no later than that.

Q. What was the topic of the conversation?

A. The conversation was that it was felt that we should have full time people rather than part time people. That we had an excess of part time people.

Q. Did he say anything else?

A. Well, many things,relative to this particular matter?

Q. Relative to this matter only?

A. Only that it was felt that this change should be made.

Q. Did he say who felt it?

A. Yes. It was through Mr. Brien that this instruction came through.

Q. It was an instruction?

A. It was an instruction.

Q. To do what?

A. To work on making those changes.

Q. Which changes?

A. That's the change of reducing part time people, and having just full time people.

Q Now whydid you -- what if anything did you do about that instruction?

A I frankly avoided it.

Q Did you tell Mr. Silverhorn why you weren't carrying it out?

A I had explained to him that I didn't see how I could operate with the kind of flexibility that I felt that I required if I had less people.

Q Did you -- was this a single conversation with Mr. Silverhorn?

A No. It was not just one conversation.

Q Did you have similar conversations with him during the period of January through August '75?

A Yes I did.

Q Approximately how many times?

A Several.

JUDGE NACHMAN: What do you mean by several? As many as fifty?

THE WITNESS: No, not that many.

JUDGE NACHMAN: As many as twenty-five?

THE WITNESS: No. I would say between ten and twenty.

Q (by Mr. Dicker) Was the conversation the same each time, or similar?

A Primarily.

Q So it would be ten to twenty times you had these conversations?

A That's right.

Q Did you speak -- did he speak to you in person about this problem?

A Yes he did, when he was here.

Q When he came to Pittsburgh?

A Yes.

Q How many times was that?

A A couple of times.

Q Did you ever carry out those instructions?

A No. I did not.

JUDGE NACHMAN: Well, did there ever come a time when you said you frankly avoided it, doing what he told you to do? Did he ever -- did there ever come a time when he was going to sort of put you on the carpet, and said look I told you what to do and you're not doing it, now why?

THE WITNESS: Well, not specifically that way.

JUDGE NACHMAN: Well, what did he say?

THE WITNESS: Well, the implication was that this was something that just had to be done somewhere along the line, and up until the time that it was done, I continued to avoid it.

Q (by Mr. Dicker) I show the witness the 1975 August and September calendar.

Were you on vacation in August of '75?

A. Yes.

Q. When did you return?

A. On Monday, August 25.

Q. Did you have any conversations with Mr. Silverhorn after your return?

JUDGE NACHMAN: May I ask you one prior question. How long were you gone on your vacation?

THE WITNESS: Three weeks.

JUDGE NACHMAN: Three full weeks?

THE WITNESS: Yes sir.

Q. (by MR. Dicker) You were out of the country?

A. Yes.

Q. Did you have any conversations with Mr. Silverhorn after returning?

A. By telephone, yes.

Q. When?

A. It was --- I'm not sure exactly what date.

Q. Was it Friday the 29th?

A. No.

MR. LADOV: Objection Your Honor.

JUDGE NACHMAN: You are leading the witness now.

MR. DICKER: I am sorry.

THE WITNESS: No.

JUDGE NACHMAN: Just give us your best estimate?

THE WITNESS: My best estimate would be the earlier part of that week actually.

JUDGE NACHMAN: Do you think probably the 26th or 27th?

THE WITNESS: Yes.

Q (by Mr. Dicker) Tell us what that conversation was about?

A. It was a repetition of what previously had been stated in essence, but in addition, it was stated that he would -- was now going to make the change. He said that he was taking it upon himself to fulfill the direction that he had had, and that he would handle our requirements, whatever they would be, that the need -- that the program now would be to eliminate the part time people.

JUDGE NACHMAN: In other words, he told you in substance --

THE WITNESS: He was going to do it.

JUDGE NACHMAN: I've told you many times what needs to be done, you haven't done it, so now I'm going to do it?

THE WITNESS: That's right.

Q (by Mr. Dicker) By the way, you said there was a telephone call from Mr. Silverhorn?

A. Yes.

Q Were you at home or in the office?

A. To the office.

Q Where was your office located sir?

A My office is in the lower section of the basement area of the store at 200 Fifth Avenue.

Q Is that where the telephone is located?

A That's one of the phones, yes sir. There are two phones down there.

Q Are there any other phones with the same number?

A Well, there are three phones altogether, two in that office and there is one on the selling floor.

Q Do you know whether anyone picked up the telephone on the selling floor during that conversation?

A No.

Q You do not know?

A No.

Q Now Mr. Levine, did there come a time when you learned about union activities in Pittsburgh?

A Yes. On Friday of that week.

Q Tell us about how you learned about it?

JUDGE NACHMAN: Friday of what week?

THE WITNESS: Of the week I returned from vacation.

Q (by Mr. Dicker) What date would that be?

A That was the 29th.

Q Of August?

A Of August. I received a letter in the mail.

Q When?

A. Well, it was the afternoon. Actually, I had been out for lunch, and returned, so it was later in the day.

Q. You received a letter. What kind of a letter?

A. It was a letter advising me of a organization -- a union.

Q. Let me show you General Counsel's Exhibit 5, and ask whether you can identify that?

A. That's the letter.

Q. That's the letter you received that day?

A. Yes.

Q. In the afternoon?

A. Yes sir.

Q. What did you do then?

A. I did nothing at that moment. I wanted to think about it, and I did, overnight. The following day I wrote a note to Mr. Brien, in which I enclosed that letter, and advising him that since Monday was Labor Day, I would phone him on Tuesday, with respect to it.

Q. When did you write this letter to Mr. Brien?

A. On Saturday.

Q. Saturday?

A. That would be the 28th.

Q. Saturday being the --

A. The 27th -- no. I am in September. It would be the 30th, yes.

Q The 30th of August?

A Yes.

Q Other than this letter to Mr. Brien, on either Friday or Saturday, did you speak --

MR. LADOV: Objection Your Honor. He testified it was the 30th, the letter.

Q (by Mr. Dicker) Other than this letter to Mr. Brien on either Friday or Saturday, did you talk to anyone else in the company concerning the union?

MR. LADOV: I withdraw my objection.

THE WITNESS: On that same day, that Saturday, I did talk with Mr. Brower, who is the manager at Fifth and Smithfield, asking him whether he had any knowledge of the situation.

Q (by Mr. Dicker) What did he tell you?

A He had no knowledge whatsoever.

Q What else did you tell him on that day, if anything?

A Nothing that I recall.

Q Now, did you in fact, as you indicated in your letter to Mr. Brien, call Mr. Brien on Tuesday?

A Yes I did.

Q That would be the 2nd of September?

A Yes.

Q Tell us about that letter, what happened? Tell us about that conversation?

A Well, Mr. Brien simply instructed me to say nothing and do nothing at that moment.

Q Nothing else?

A Primarily nothing else.

Q Did you hear anything more about the union during thatweek?

A No. I heard nothing else.

JUDGE NACHMAN: Which? The week of Labor Day or the week before?

MR. DICKER: The week of Labor Day.

THE WITNESS: The only notice I had any week was the letter. That was all I had heard.

Q (by Mr. Dicker) So during the week of the 25th of August and the first of September, was there anything else, any otherdiscussions you had, or any other notice you had concerning the union?

A None whatsoever.

Q During those two weeks. Mr. Levine, do you know a Mr. Ron Bakowski?

A Yes.

Q Who is Mr. Ron Bakowski?

A Mr. Ron Bakowski is here in this court now, and has been an employee over a period of time.

Q Let me go back. Mr. Bakowski worked at the Smithfield Street store?

A. Yes he did.

Q. Are you familiar with the circumstances surrounding his employment in that store?

A. Yes I am.

Q. Will you tell us about that?

A. Mr. Bakowski had left us for a period of time and --

Q. About when was that?

A. A few years back. And Mr. Brower had asked me -- they neededa man, and asked me whether he should employ Mr. BAkowski, or that he wanted to employ Mr. Bakowski. And my statement to him at that time was that we have had problems with Mr. Bakowski. We've had it necessary to shift him from one store to another, and that I would be concerned somewhat about it. He said that he could handle the situation sir.

Q. He being?

A. Mr. Brower.

Q. Mr. Brower thought he could handle the situation?

JUDGE NACHMAN: What period of time was Mr. Bakowski away?

THE WITNESS: Over what period of time with us?

JUDGE NACHMAN: Was he away? You said he was away from --

MR. DICKER: He was not employed by Florsheim, he was away.

THE WITNESS: I'm not sure of the period of time frankly, but it was whatever period of time -- it was a period where he was not employed.

JUDGE NACHMAN: Well, why did that come about? Was he discharged? Did he leave voluntarily, or what?

THE WITNESS: He left voluntarily.

Q (by Mr. Dicker) Was in fact Mr. Bakowski hired by Mr. Brower?

A. Yes he was.

JUDGE NACHMAN: Do you know about when that was?

THE WITNESS: I am sure that that's a matter of record. The specific date, I don't --

JUDGE NACHMAN: I am asking you if you know?

THE WITNESS: No. I don't know the exact date.

Q (by Mr. Dicker) Between the time that Mr. Bakowski was hired and the time youwent away on vacation, in the beginning of August of 1975, did Mr. Brower ever talk to you about Mr. Bakowski?

A. Yes he did.

Q Do you remember when?

A. Not the specific times, but there were a few occasions when he did talk to me about it. That he was having what he considered to be problems.

Q All right. Would you tell us approximately how many times you spoke with Mr. Brower -- Mr. Brower spoke to you about Mr. Bakowski?

A. Several. Four or five, six maybe.

Q. Could you tell us in substance what these conversations were?

A. That there was dissension being created by Mr. Bakowski, and that he found that he very frankly admitted that he should have taken my admonition, and had not re-employed him. That he felt that this dissension was getting out of hand, and that he was having continuing problems.

Q. What, if anything, did you do about that?

A. Excepting for the fact that I spoke with Mr. Bakowski on at least two occasions myself, nothing specifically.

Q. When did you speak to Mr. BAkowski?

A. Well, this again I would not be able to provide, but in the period of this past year, prior to the termination of -- at least two occasions.

Q. Will you tell us about those occasions? What was said?

A. Yes.

JUDGE NACHMAN: This was after Mr. Brower had made complaints to you?

THE WITNESS: Yes. My effort was --

Q. (by MR. Dicker) Tell us what you said and what Mr.

Bakowski said in substance. You know, I don't want the words, but just tell us what he said and not what your efforts were?

A. Well, what I said was why not -- why don't you just quiet down and take things easy, and do not create disturbances, and don't let it bother you so that we have a problem.

In short, what I started to say was that the words were to support an effort to quiet things down.

Q What did Mr. Bakowski say, if anything, to these suggestions to quiet things down?

A. Well, wherever I spoke with him, he was cordial and would listen to my conversation. We normally left each other with a feeling that perhaps it would be settled.

JUDGE NACHMAN: That was the reaction that you had from your conversation with him on these occasions?

THE WITNESS: That's right.

Q (by Mr. Dicker) Subsequent to your returning from vacation on August 25th, did you have any other conversations with either Mr. Brower or Mr. Bakowski?

A. I had a conversation with Mr. Brower.

Q When was that?

A. That conversation was during that week when I returned, for a specific date, I'm not sure of specific dates. But he was again complaining about Mr. Bakowski.

Q Can you give us an idea of when during that week that conversation occurred?

A It was the earlier part of that week, Tuesday, Wednesday.

Q Tuesday the 26th?

A 26th or 27th.

Q What was the conversation again?

A That there was a continuing problem, and that he felt that he didn't know whether he could live with it.

Q He being Mr. Brower didn't know whether he could live with?

A Mr. Brower, that's right.

Q With what?

A With Bakowski, with having --

Q What did you say?

A I said that if he felt that way, to do whatever he thought best, but certainly to make sure that he had someone to replace him,to be covered.

Q Did you have a subsequent conversation after that, Tuesday or Wednesday, with Mr. Brower?

A Yes.

Q When was that?

A I believe it was on Thursday, the 28th.

Q Thursday the --

A 28th.

Q About what time of the day?

A This was in the afternoon. Late afternoon. He had told me that he--

Q He being Mr. Brower?

A Mr. Brower told me that he had determined to terminate Mr. Bakowski.

Q What did you say?

A I simply said, you know, well, I hope you know what you're doing. Like I said, if you have a replacement, okay.

Q What did he say?

A He said I think I have it covered, and he said I think I shall do it.

Q Was that the end of that conversation?

A No. He -- see it so happened that Mr. BAkowski was on vacation, and I told him to make sure that he contacted him, or tried to contact him by telephone.

Q Was that the end of the conversation?

A He said that he would, and that was the end of that particular conversation.

Q Was there a subsequent conversation with Mr. Brower?

A Yes there was.

Q When was that?

A That same day.

Q How much later?

A. Oh, within the hour I would say. He said that he wasn't able to reach him by phone, and that --

MR. LADOV: Objection Your HOnor.

JUDGE NACHMAN: Wasn't able to reach Mr. Bakowski by phone?

THE WITNESS: Yes.

JUDGE NACHMAN: What is the objection?

MR. LADOV: Hearsay. It's to the truth of the matter.

JUDGE NACHMAN: Yes, but it is admissable for the purpose of showing what information came to this witness.

MR. LADOV: To this witness, yes sir.

JUDGE NACHMAN: I will receive it for that purpose.

Q (by Mr. Dicker) Continue Mr. Levine.

A. He said he was unable to reach, that is Brower was unable to reach Bakowski by telephone, and he was writing him a letter of termination.

Q What did you say?

A. I was a little bit surprised, because Mr. Bakowski had just been there, and had walked out with me that -- just shortly before all of this, that he was not available by phone, but nevertheless I accepted this method of being -- that method was acceptable and Mr. Brower then read the letter to me that he had written.

JUDGE NACHMAN: Do I understand you correctly? You had seen Mr. Bakowski within the hour or two prior to Mr.

Brower's notifying you that he was not able to reach him by telephone?

THE WITNESS: That's right sir.

JUDGE NACHMAN: In that meeting, did you tell him -- Mr. Bakowski, of the impending facts that you --

THE WITNESS: No. I didn't talk to Mr. Bakowski at all. Mr. Bakowski had already left when I had talked with Mr. Brower about all of this. I had walked out with Mr. Bakowski to have my lunch.

JUDGE NACHMAN: Now in that conversation did you tell him anything at all about the fact that -- what was impending and what might happen?

THE WITNESS: No I didn't, not a word.

Q (by Mr. Dicker) Now let's go back to that a little bit. YOu saw Mr. BAkowski on the 28th?

A. Yes.

Q About what time?

A. I would suspect it was about two or three o'clock in the afternoon, I don't know the precise time, but it was in the afternoon.

Q Where was he?

A. He was at 200 Fifth Avenue, which is the store my office is in.

Q What conversation, if any, did you have with Mr. Bakowski that day?

A. Simply walking out of the store, I said come with me, and as we walked up the street I simply said go ahead, I'm going to have something to eat, you go ahead and have your vacation.

Q. What did he say?

A. That's all. There was nothing.

Q. Did -- when was this conversation in relationship to the first telephone call you received from Mr. Brower on that day?

A. This was prior to the conversation I had with Mr. Brower.

JUDGE NACHMAN: You had two conversations with Mr. Brower. Prior to both of them?

THE WITNESS: Yes. Prior to both conversations.

Q. (by Mr. Dicker) This is prior to both conversations?

A. Prior to both conversations.

Q. Now you were in the middle of the second conversation, which you said was about an hour or so after the first conversation with Mr. Brower?

A. Yes.

Q. He told you he was unable, I think you testified, to reach Mr. Bakowski at home and he was going to write him a letter?

A. Yes.

Q. Pick it up from there?

A. Well, when he told me -- Brower told me that he was unable to reach Mr. Bakowski, at the same time told me that he was writing a letter to him, terminating his services.

This particular letter he read to me over the phone.

Q. Do you remember what the letter said?

A. No. Simply I don't recall the letter in detail, just to a matter of stating that his services were being terminated.

Q. Have you ever seen that letter?

A. I may have. I am not real certain.

Q. Let me show you General Counsel's Exhibit 12, and ask you whether or not it refreshes your recollection as either to as to what the letter said, or as to whether or not you ever seen it?

A. I don't believe I saw the letter, it was read to me.

Q. Excuse me.

A. I do not believe that I actually saw the letter, it was read to me.

Q. Mr. Levine, on the 10th or 11th of September, did you have a conversation with Mr. Schneider?

A. I may have.

Q. Did you have any conversation with Mr. Schneider concerning the union?

MR. LADOV: Objection Your Honor.

JUDGE NACHMAN: Overruled.

.THE WITNESS: Did he say overruled?

MR. DICKER: Yes. Answer the question.

JUDGE NACHMAN: Answer the question.

THE WITNESS: I don't believe I did.

Q (by Mr. Dicker) No conversation at all?

A I don't recall a clear conversation with him, but is there some reminder you can give me?

Q Did you ever ask Mr. Schneider why you hadn't been informed about the union?

MR. LADOV: Objection Your HOnor.

JUDGE NACHMAN: Overruled.

THE WITNESS: I don't believe so.

Q (by Mr. Dicker) Did you ever ask Mr. Schneider whether he had signed a union card?

A No.

Q Did you ever ask Mr. Schneider whether Mr. Ball had signed a union card?

A No.

Q Did you ever ask Mr. Schneider whether or not Mr. McGonigle had signed a union card?

A No.

Q Did you ever ask Mr. Schneider if everybody was involved in the union?

A I don't think so.

Q Did you ever ask Mr. Schneider if he knew what would happen if he went out on strike?

A Oh, no.

Q Do you remember a conversation with Mr. McGonigle?

A Yes.

Q Did you talk to him concerning his -- what did you talk to him about, around the 8th of September?

A I remember two specifics. One was that I asked Mr. McGonigle whether he would be in a position to accept full time employment, since we were going to make changes from part time people to full time people.

Q About when was that?

A Well, that was probably on or about the 8th of September.

Q Any other conversation that you remember with him?

A Yes. I said to him if you had any information, why didn't you tell me about it.

Q Had any information, I don't understand that?

A If you knew anything that I should know relative to the union, why didn't you tell me.

Q What did he say?

A He didn't answer.

Q He didn't answer?

A No.

Q Any other conversation with him that you can recall?

A. That's all.

Q. Did you ever ask Mr. McGonigle whether he had signed a representation card?

A. I did not.

Q. Did you ever ask Mr. McGonigle whether he had attended a union meeting?

A. I did not.

Q. Did you ever ask Mr. McGonigle who had attended -- who else had attnded a union meeting?

A. No.

Q. Did you ever ask Mr. McGonigle why the men wanted a union?

A. No.

Q. With respect to the schedule changes that you had mentioned, what was Mr. McGonigle's response?

A. The schedule change?

Q. Right. About working full time?

A. Oh, he said simply that he was unable to do so, because he was attending college.

Q. Then what did you say?

A. That's all. I said nothing else.

Q. Did you ask him whether you would see whether you could work something out?

A. No.

Q. YOu didn't say that?

A. No.

MR. DICKER: I have nothing further.

JUDGE NACHMAN: You may cross examine.

MR. LADOV: Your Honor, could I have five minutes, just to get all mynotes together? Sir, we've testified to a number of different occasions and conversations.

JUDGE NACHMAN: All right.

Off the record.

(A short recess was taken.)

JUDGE NACHMAN: On the record.

Proceed Mr. Ladov.

CROSS EXAMINATION

Q (by Mr. Ladov) Mr. Levine, you've testified you've been general manager in the Pittsburgh area stores for fourteen years?

A. That's correct.

Q Had you worked for Florsheim in the Pittsburgh area -- or have you worked for Florsheim prior to these fourteen years?

A. Yes.

Q Where?

A. Chicago, Boston, Pittsburgh.

Q How long did you work in Pittsburgh?

A. 1955.

Q Just one year?

A. Yes.

Q. When did you become general -- I'm sorry. Strike that.
In the fourteen years that you have been general manager, isn't it true that you had part time employees at the stores?

A. Yes.

Q. The one year that you worked in 1955 in Pittsburgh, did you have part time employees in the stores?

A. I'm not certain frankly. I'm not sure.

Q. You've stated that sometime in January you spoke with Mr. Silverhorn by phone?

A. Approximately then, yes.

Q. For the first time he told you that -- what did he tell you?

A. At that time, and perhaps even before, I'm not certain, he told me thatit was felt in Chicago that my arrangements of having part time people would have to be altered and that full time people were required, would be.

Q. Did he tell you all part time people should be eliminated?

A. At that time, I guess he said a reduction of,perhaps were his words. In subsequent conversations, if not in that one, it was determined that all part time people would be.

Q. When did he say all part time people?

A. Possibly at that time. I don't recall specifically, but possibly at that time.

JUDGE NACHMAN: Did you ever receive any instructions to cut out two part time employees at the Fifth Avenue store, or at the Smithfield Avenue store?

THE WITNESS: No, not specifically, no. Not that I have any recollection of.

JUDGE NACHMAN: He never made any statement to you along that line?

THE WITNESS: Of cutting specific individuals?

JUDGE NACHMAN: Specific number of employees, temporary employees, at a specific store?

THE WITNESS: No, not that I recall, no. It was a more general kind of thing.

Q (by Mr. Ladov) How many times did you discuss this matter with Mr. Silverhorn in the month of January, 1975?

A Possibly twice.

Q Possibly twice?

A Yes.

Q Do you recall what was said to you in the second conversation, Mr. Levine?

A Nothing different than the first conversation, and in each of the -- I'm sorry.

Q Now go ahead.

A I just thought to say that the subsequent conversations were primarily the same. It was frankly an effort on my part to avoid.

Q Did you tell him that in January?

A Yes, I eventually told him that. I don't know if it was in January, but I did.

Q Directing your attention now to January, you've testified that you had two conversations with Mr. Silverhorn. Is that correct?

A I said probably.

Q Two?

A Yes.

Q Did you also receive written memorandum to this effect to aliminate part time employees from Mr. Silverhorn?

A I frankly can not answer that. I do not recall a memorandum.

Q In January?

A I just don't recall a memorandum. I may have. There were a lot of notes sent.

Q There were a lot of notes sent?

A Different matters, yes. But I don't recall if I received one on that specific matter.

Q Mr. Levine, we must clear this up.

In January, did you receive any written memorandum from Mr. Silverhorn?

A I do not know if I did or did not.

JUDGE NACHMAN: I didn't hear your answer?

THE WITNESS: I don't recall. I'm not sure. I do not know whether I did or did not receive in January a written memorandum, or if I ever did.

Q (by Mr. Ladov) What about in February, did you talk with Mr. Silverhorn in February about this matter?

A Probably.

Q How many times?

A I don't know. I would say -- do you want my approximation?

Q One time?

A My approximation --

Q No, no, Mr. Levine. Answer the question please? Did you talk with Mr. Silverhorn in February of 1975 about the reduction of part time employees, one time?

A Possibly.

Q Do you recall one time?

A Not specifically.

Q Do you recall two times?

A Possibly, but not specifically.

Q Three times?

A I don't think that many.

Q Four times?

JUDGE NACHMAN: Do I understand your testimony that you had what you would estimate from ten to twenty conversations with Mr. Silverhorn, but you have no recollectio as to when they were?

THE WITNESS: That's right. I do not know specifically when they were, that's right.

Q (by Mr. Ladov) Dealing again in February, could you have had four conversations with Mr. Silverhorn in the month of February?

JUDGE NACHMAN: I can answer that question for you. It's possibly.

Q (by MR. Ladov) Did you have four conversations with Mr. Silverhorn?

A I'm not sure.

Q Do you recall having five conversations with Mr. Silverhorn in February?

A No I don't.

JUDGE NACHMAN: I think you are arguing with the witness.

Q (by Mr. Ladov) Did you receive any written memorandum from Mr. Silverhorn in the month of February, regarding this matter?

A None that I recall.

Q In March 1975, do you recall having any conversations with Mr. Silverhorn regarding this matter?

A Not specifically, no. I can not tell you. There were frequent conversations over the period of time, and specifically to determine that particular date, I can not do, or even the month.

Q Do you recall receiving any written memorandum in the month of March?

A No.

Q From Mr. Silverhorn?

A No. I have no recollection.

Q Do you recall receiving any memorandum --

A Relative to this particular matter you mean?

Q Yes, in the month of April from Mr. Silverhorn?

A I don't recall a memorandum.

Q Do you have any in your files Mr. Levine?

A No, I don't keep memorandums.

Q Well, did you ever have any memorandums?

A Oh, yes in various, various things.

JUDGE NACHMAN: Any memorandum on this subject?

THE WITNESS: No, not that I recall. Not that I recall, and I may have, but I just don't recall any.

Q (by MR. Ladov) Do you have any with you here today?

A No.

JUDGE NACHMAN: I take it that your testimony is that you have no recollection of any memorandum from Mr. Silverhorn on this subject at all?

THE WITNESS: On this particular matter at all, I have no recollection at all of having received a written memorandum.

JUDGE NACHMAN: You are not ruling out the possibility, you may have?

THE WITNESS: Because I may have, right.

Q (by Mr. Ladov) During these four months, January through April, 1975, is it your testimony that you informed Mr. Silverhorn that you would not -- that you were not carrying out his directives?

A What I said to Mr. Silverhorn during that period of timewas that my circumstances were such that I would prefer not making any changes at this time, and I maintained thatposition as long as I was able to do so.

Q Why Mr. Levine?

A Because it affects my work, and I still believe that it affects my personal flexibility in the operation of the stores.

JUDGE NACHMAN: In your judgment, that just wasn't the -- and in your circumstances, that wasn't the efficient way to operate?

THE WITNESS: Not from my standpoint, that is correct.

Q (by Mr. Ladov) Do you often disobey directives from company management?

A I have from time to time not agreed with company management determinations and I have argued it.

Q Do you often disobey in your fourteen years as manager?

A I would suspect there have been times that I have not agreed, nor have I obeyed.

Q Has there ever been an occasion where you have been told about something ten to twenty times, and not obeyed?

A Yes.

Q You have?

A Yes.

Q On what matter?

A On making very specific changes in the operation.

Q Such as what?

A Such as my own timing of my own movements.

Q When did this occur?

A Throughout the years.

Q What year?

A Well, I don't know what year. You are asking general questions and --

Q No. I am asking very specific questions. You've told me that you don't recall when they have ordered you to -- strike that.

A Shall I answer it?

JUDGE NACHMAN: Just a minute. The question is stricken.

Q (by Mr. Ladov) Now Mr. Levine, did any upper level management complain to you about your own personal working hours?

A. No, not hours.

Q. Your own -- what did they complain to you about?

A. We're talking in terms of my immediate supervisors, and these are the people about whom I am talking. It has been a practice over the period of times have changed supervisors, occasionally. I am in full recognition of this fact, and I have often -- well, frequently -- occasionally, I'll put it that way, disagreed and have done it my way rather than their way. Have attempted on those occasions to make responses by mail as to why I felt that this was the right of way of doing it, that I resist the changes were being suggested.

Q. Now I am specifically asking you what change was suggested to you, that you rejected?

A. For example, that my travels to the shopping centers should be a minimum of two or three times a week to each center. This would be one example.

Q. When did that occur?

A. This would be within the past fourteen years. What specific year, I can't say. My feelings on that score was that I could not make that many trips.

Q. Had you ever disagreed and disobeyed company policy regarding the complement of your employees, prior to this time?

A. Perhaps.

Q Did you -- do you recall?

A Let me think for a moment. I can't remember a specific instance as to employees.

Q Mr. Levine, is it true that in January of 1975, approximately two/thirds of your employee complement was part time employees?

A If that's the figure, what ever it was.

JUDGE NACHMAN: Well, do you have any idea whether that figure is substantially accurate?

THE WITNESS: Probably half, perhaps two/thirds.

Q (by Mr. Ladov) It is your testimony today that you disobeyed, approximately between ten and twenty directives regarding the at least half of your employee complement. Is that your testimony today?

A That's my testimony.

Q And that you continued to disobey these directives for nine months?

A It's substantially --

Q Is that your testimony from January to August?

A My testimony is that I resisted, yes I resisted.

Q Well, did it happen Mr. Levine?

A It did not happen.

Q So you disobeyed?

A That's right.

Q Weren't you afraid of being fired Mr. Levine?

A Not really.

Q Why?

A Because I felt that my relationship over the years was such that I was in a position to make such resistance. I had previously had that experience.

Q Previously you had experience?

A Yes.

Q Mr. Levine, do you have the calendar in front ofyou?

A Yes.

Q I direct your attention to the week of August 25th.

A Yes.

Q That's when you came back from your vacation, correct?

A That's correct.

Q And that you had been away for three weeks prior to that time. Is that correct?

A That is correct.

Q To the best of your knowledge Mr. Levine, did Mr. Bakowski work -- what store did Mr. Bakowski work in?

A The store at Fifth and Smithfield, at 501 Smithfield Street.

Q To the best of your knowledge, did Mr. Bakowski work the 25th?

A To the best of my knowledge, he worked that week.

Q The 26th?

A The 26th.

Q The 27th, Wednesday?

A That, I believe was the day he started his vacation, I am not positive.

Q Could it have been the 28th?

A It could have been the 28th.

Q Do you recall if Mr. Bakowski had the 28th off?

A He was in my store on that date, so he obviously had it off.

Q He was in the store on the 28th?

A That's right.

Q Did you see Mr. BAkowski the 27th of August?

A No. I initially -- my initial testimony,if I recall, I said Wednesday, it is Thursday.

Q So you did not see Mr. BAkowski the 27th of August?

A Not thatI recall, no.

Q But you did see him the 28th?

A That is right.

Q Is it trua that you told Mr. BAkowski to enjoy his vacation on the 28th of August?

A That is true.

Q You never told him to enjoy his vacation on the 27th of August, did you?

A No. No, I didn't speak with him, only about one occasion that week.

Q Did you see Mr. Brower the 28th of August?

A No, I didn't see Mr. Brower on the 28th of August.

Q I show you what has been introduced as General Counsel's Exhibit No. 13 Mr. Levine, canyou identify what that is please?

A Yes, this is a termination notice.

Q Is that your signature on the bottom of the page?

A No, it is not.

Q Where it says H. B. Levine, G.M.?

A No. That is not my signature.

Q Who wrote that?

A Mr. Brower probably.

Q So then --

JUDGE NACHMAN: Are you familiar with Mr. Brower's handwriting?

THE WITNESS: Well, it's right here.

JUDGE NACHMAN: Are you familiar with it? Can you say that that is his handwriting?

THE WITNESS: No. I can't say that that is his.

Q (by Mr. Ladov) You are sure you never signed that?

A That is correct.

Q Did you ever see this?

A No.

Q Is this the first time you've ever seen this?

A Firsttime I've seen this.

JUDGE NACHMAN: By this, you mean General Counsel's

Exhibit 13.

MR. LADOV: Exhibit 13.

THE WITNESS: This is the termination that Mr. Brower sent in accordance with normal procedures to our office in Chicago.

Q (by Mr. Ladov) Is it normal that you get a copy of this at the same time?

A No.

Q YOu never see the termination notices?

A No. That's not true, I do sometimes see them.

Q But it's your testimony today that you never saw that?

A That is correct.

Q Nor did you ever see the actual discharge letter to Mr. BAkoswki, did you?

A No, I didn't see that. I don't recall having seen it at all. I just recall having had it read to me over the phone.

Q I show you --

JUDGE NACHMAN: When was it read to you over the phone? What day?

THE WITNESS: That was that Thursday, the 28th of August.

JUDGE NACHMAN: So that although you did not see Mr. Brower on the 28th, you did talk with him?

THE WITNESS: Oh, yes.

Q (by Mr. Ladov) You are sure that it was on the 28th of August?

A. I feel certain, yes. Yes, I feel almost certain -- just absolutely certain that it was the 28th.

Q Do you feel certain --

A. Of course it was the 28th, we are open Thursday nights. It had to be.

Q It had to be?

A. Yes.

Q That all these conversations with Mr. Brower occurred --

A. On the Thursday.

Q What time?

A. In the afternoon.

Q In the afternoon, what time in the afternoon?

A. Four o'clock.

Q The first conversation with Mr. Brower occurred at four o'clock in the afternoon?

A. Somewhere in that neighborhood.

Q What was said in this conversation?

A. What was said was that he had determined to terminate Mr. Bakowski, and that he was going to let him know.

Q Did he tell you how he was going to let him know?

A. I talked to him about calling him on the phone, and that was the manner that was going to be used.

Q What else was said during that conversation?

A I said -- I think I said, yes, I'd like you to reach him by phone, and that's about all. Oh yes, and please be sure you're covered.

Q What did he say?

A He said I think I can be covered.

Q What time did this conversation occur?

A Around four o'clock in the afternoon, to the best of my recollection.

Q What time did you go to dinner that day?

A Prior to that.

Q What time?

A Three, three-thirty.

Q Did you go to Palmer's Restaurant?

A No. Just around the corner to Clifford's.

Q Clifford's. And you walked out of the store with Mr. Bakowski?

A That's correct.

Q You had another conversation with Mr. Brower that day?

A Yes I did.

Q What was that conversation?

A That conversation, he told me he was unable to reach Mr. BAkowski by phone, that he was sending a letter, which he then read to me.

Q Did Mr. Brower tell you he had been informed that Mr. Bakowski had gone on his vacation?

A Please repeat that.

Q Did Mr. Brower, during your second conversation with Mr. Brower on, which you contend August 28th, did Mr. Brower tell you that he was unable to speak with Mr. Bakowski?

A Yes.

Q Did he say the reason that he was unable to speak with Mr. BAkowski was that he had been told Mr. Bakowski had left for his vacation?

A That is correct. That's what he told me.

Q You thought that was a little strange, didn't you?

A Yes.

Q You had just seen him an hour before?

A That is right.

MR. DICKER: Objection, it wasn't the testimony.

JUDGE NACHMAN: Overruled.

THE WITNESS: That's the truth. Thatis so.

Q (by Mr. Ladov) Did Mr. Brower tell you who he spoke with in Mr. Bakowski's home?

A I think he said he spoke with his father, but I'm not certain of that.

Q Did Mr. Brower tell you that he had a replacement?

A Yes. He said hehad a replacement.

Q Who started the next day?

A He had a man come over, who only stayed I think a day.

Q Who was that?

A I don't recall the guy's name. I haven't even met him.

Q Where did he come from?

A From the store across the street, and I don't know --

Q What kind of store?

A It's a shoe store, but I don't know which one, and I didn't get an opportunity even to meet the man.

Q How long had Mr. Bakowski been working for Florsheim?

A On and off, several years.

Q Approximately seven years?

A I said several years.

Q I am asking you, was it approximately seven years?

A It could be, it could be more.

Q It could be more. You don't know the name of the replacement?

A I never met him.

Q He only worked one day?

A One day or two days, I'm not sure which.

Q Then who did he have to replace him?

A He didn't have anybody at that point.

Q Did you interview employees before they are hired?

A My own people, and very rarely people who are employed by my other managers. If they find them acceptable, then it is normally acceptable to me.

Q Do they have to clear the actual hiring of someone though?

A Until very recently, there was no requirement at all. Recently there was a direction that I initial the applications.

Q How about just for the fact of hiring another person, don't they have to clear that with you?

A Yes.

Q Before they can hire another person?

A They would normally discuss it with me, yes.

Q Did Mr. Brower ever discuss the hiring of Larry Paranzino with you?

A I believe he -- yes, he did.

Q When Did he discuss that with you?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

MR. DICKER: Well beyond the scope of direct examination.

Q (by Mr. Ladov) When did he discuss that with you?

A I don't recall when.

Q In the month of August?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: I don't know.

MR. DICKER: Again Your Honor, I call Your Honor's attention to page 447 of the record, this is contrary to the ruling.

JUDGE NACHMAN: Whatever is in the record, I will see.

Q (by Mr. Ladov) Are you aware that Mr. Paranzino began work August 25th, 1975?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: What ever is the date of the record, that's the date that he went to work. I don't know what that specific date was.

MR. LADOV: Mark this as General Counsel's Exhibit 30 for identification.

(The document above-referred to was marked General Counsel's Exhibit No. 31 for identification.)

Q (by Mr. Ladov) Mr. Levine, I show you what has been marked for evidence as General Counsel's Exhibit No. 31. Can you identify that please?

A Yes.

Q What is it? Is that an affidavit you submitted to the National Labor Relations Board on October 29th, 1975?

A I believe this is the same.

Q Is that your signature on the bottom of page 2?

A Yes.

Q Do you have any doubts that this is the affidavit, your affidavit, that you submitted?

A No, this is it.

Q I direct you to paragraph 7 of the affidavit Mr. Levine.

A Yes.

Q I ask you to read the 12th sentence in paragraph 7, to yourself, The day before .

A The day before, starting with the day before?

Q Read that to the endof the paragraph please?

A Yes. That was incorrect.

Q That testimony, that is incorrect?

A Yes it is.

Q That is not your testimony today?

A That is correct. I changed that to Thursday.

Q But today you are sure of Thursday?

A Yes, I feel --

Q The 28th?

A Yes, I do believe it was Thursday, yes.

Q You are sure that it was Thursday?

A I feel sure that it was Thursday.

Q Are you sure of the date that Mr. Silverhorn allegedly called you that week?

A Pardon me again, am I sure that --

Q What day did Mr. Silverhorn call you?

A It was the first part of that week.

Q What day?

A I don't know what specific day. It was Tuesday or Wednesday.

Q Could it have been Thursday?

A No, it was not Thursday.

Q Are you sure of that?

A Yes.

Q Tuesday or Wednesday?

A Yes.

Q When Mr. Silverhorn called you that week, what did he say?

A He said that he was going to make the changes, that I had resisted.

Q That he was going to?

A Yes.

Q Did he tell you that Mr. Brien would handle this matter personally?

A I don't recall if he said that specifically. He simply said that the arrangements were being made, and he would handle them.

Q Handle what?

A The arrangements. The alteration of changes, personnel changes.

Q What changes did he say to you would be made?

A Just simply that we were going to replace our -- we were going to eliminate actually our part time people.

Q Did he say all part time people?

A Yes.

Q Did you tell him at that time that a new part time employee had been hired the day before?

A No.

Q You didn't?

A No.

Q It's your testimony that Mr. Bakowski was at your store, the Fifth Avenue store,on Thursday, August 28th?

A He was at my store, to the best of my belief, and I do believe that it was Thursday, August 20 -- whenever it is.

Q That was the day you said that you told him to enjoy his vacation?

A Correct.

Q Do you recall how long he was in the store?

A No, I don't know how long he was in the store. I was in my office doing my work, came upstairs and he was seated in the store. That was the first time I knew that he was in the store.

Q Is it your testimony that you never saw Mr.

Bakowski's discharge letter?

A. That is correct.

Q. Is it also your testimony that you never saw the termination form?

A. That is also correct.

Q. Of Mr. Bakowski?

A. Correct.

Q. YOu have testified that you learned of the union on Thursday, August 29th, is that correct?

A. Friday.

Q. Friday, August 29th?

A. Correct.

Q. Did you call Mr. Brien in Chicago on that day?

A. No I did not.

Q. Had you any knowledge of the union activity prior to the receipt of this letter?

A. No.

Q. Were you surprised?

A. Yes.

Q. But you didn't call him that day?

A. No.

Q. Did you call him Saturday?

A. I couldn't reach him on Saturday.

Q. Did you attempt to reach him on Saturday?

A. No.

Q You didn't call Monday?

A Labor Day.

Q You weren't in -- you weren't working Monday?

A That's right.

Q You waited until Tuesday?

A Right.

Q Did you ever have any conversations with Mr. Brower about the union?

A Not until Saturday, I simply asked him, that was on the 30th, I simply asked him -- I told himthat I had received a letter, and I asked him what he knew, and he said absolutely nothing.

Q Did you have any other conversation -- strike that.

Did you ever ask Mr. Brower again if he knew anything about the union, after this first time?

A I may have. I don't have any recollection of having done so.

Q Mr. Brower ever tell you any information about the union?

A No.

Q Did he ever tell you that he had learned about Louis Scott's union activities?

A No.

Q Did you ever ask him?

A No.

Q From September 2nd -- I'm sorry. Strike that.

From August 29th until September 8th, did you ever ask any managers if they knew anything about the union?

A Not to the best of my recollection.

Q Did any of your four other managers ever tell you, between the 29th of August and the 8th of September, anything about the union?

A Not a thing.

Q Nothing?

A Nothing.

Q How about after September 8th, did you ever ask any managers anything about the union?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: Yes.

Q (by Mr. Ladov) What? I beg your pardon, who? Who did you ask?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: Each manager.

Q (by Mr. Ladov) Each manager?

A Right.

Q What did they -- what did Mr. Brower tell you after September 8th about the union, when you asked him?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

MR. DICKER: May I have a continuing line of objection to this line of questioning on the same ground as to the effect of the contrary ruling on my cross examination.

JUDGE NACHMAN: All right.

Q (by Mr. Ladov) What did Mr. Brower tell you about the union?

A He actually knew very little, practically nothing at all.

Q After September 8th what did he tell you?

A I wish I could answer that. I really don't recall what he said to me.

JUDGE NACHMAN: He's answered the question.

Q (by Mr. Ladov) Did he mention the union to you?

A He must have talked about it.

Q Did he mention any of the employees' union activities to you?

A Not that I know of, not that I recall.

Q Did you ask him about it?

A I'm sure I must have.

Q How about Mr. Holleran. Did you ask him about any union activities?

MR. DICKER: Objection. Same objection. Same continuing objection.

JUDGE NACHMAN: Overruled.

MR. DICKER: I have a continuing objection to this line of questioning.

JUDGE NACHMAN: All right.

THE WITNESS: I am certain that I asked each of the managers what they could tell me. I really had no information from any of them, that was directly involved with union activities.

Q (by Mr. Ladov) What did Mr. -- did Mr. Holleran tell you anything about any individual employee's union activities, at his store, after September 8th?

A If he did, it would only be that there is interest on the part of his employees in the union, period.

Q He told you that he knew there was union interest on the part of the employees in the union?

Did he tell you that?

A Yes.

JUDGE NACHMAN: Did the other managers tell you substantially the same thing?

THE WITNESS: Substantially the same thing. That's all that I recall. In every conversation, nothing was specific.

Q (by Mr. Ladov) I direct your attention to General Counsel's Exhibit No. 31 Mr. Levine. Would you please read paragraph 8?

A Yes.

Q Is that your testimony today?

A Yes.

Q Is [illegible]rue, no store managers ever reported anything about union activity to me?

A Not that word ever.

Q So that is not your testimony today?

MR. DICKER: Objection. He is arguing with the witness.

JUDGE NACHMAN: I thinkyou are arguing with the witness.

Q (by Mr. Ladov) Is that your testimony today Mr. Levine?

MR. DICKER: Objection.

JUDGE NACHMAN: You are arguing with the witness. The witness' testimony is in the record. I will decide whether it is different from his testimony if the statement is.

Q (by Mr. Ladov) Mr. Levine, how do you get your employees for the five stores? Do you advertise for them?

A No.

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: I never advertise for any employees.

Q (by Mr. Ladov) Do they just walk in?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: Sometimes. Sometimes I make efforts through people in the business.

Q (by Mr. Ladov) Have any individuals walked into your store, from September 19th, '75 up until the present, to apply for a job?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: Yes.

Q (by Mr. Ladov) How many?

A Several.

Q Several. Full time jobs?

MR. DICKER: Objection.

JUDGE NACHMAN: Overruled.

THE WITNESS: Primarily, partially is a better word.

Q (by Mr. Ladov) Did you ever inform Mr. Silverhorn, during the year 1975, that you had no applicants for full time salesmen in the area?

A At that particular moment, no reasonable applicants.

Q What particular moment did you tell him this?

A Well, whatever time it was that that came up. I don't recall when it was.

JUDGE NACHMAN: He called you in January, and numerous times thereafter in succeeding months.

THE WITNESS: Somewhere along the line.

JUDGE NACHMAN: Just a minute sir. You can't answer my question before you hear it.

He called you a number of times in January and thereafter succeeding months, urging you to replace part time people, but you resisted.

Did you ever, in any of those conversations, tell him that you had no full time applicants for jobs?

THE WITNESS: Yes.

JUDGE NACHMAN: Or applicants for full time employment?

THE WITNESS: Yes.

Q (by Mr. Ladov) When did you tell Mr. Silverhorn this?

A I can't give you a date on that.

JUDGE NACHMAN: Did you tell him that once or more than once?

THE WITNESS: Probably once.

JUDGE NACHMAN: Well, do you remember when that one occasion was closer to January or closer to July?

THE WITNESS: I truly don't recall.

Q (by Mr. Ladov) Is it your testimony Mr. Levine, that on September 8th, you asked Mr. McGonigle whether he could accept full time employment since we were going to make changes here?

A No.

Q Did you do this on September 8th, pursuant to Mr. Holmes' instructions to you?

A No.

Q Whose instructions did you do this to?

A My own.

Q Your own?

A Yes.

Q Has Mr. Silverhorn ever instructed you to ask full -- part time employees if they could accept full time?

A Subsequent to that date, I was -- it wasmentioned that that should be done,yes.

Q Subsequent to September 8th?

A Subsequent to September 8th.

Q This was during the same conversation that you asked Mr. McGonigle -- thatyou stated to Mr. McGonigle, if you knew anything, why didn't you tell me? And you were referring to the union, weren't you?

JUDGE NACHMAN: I didn't hear an answer.

THE WITNESS: Yes.

Q (by Mr. Ladov) Mr. Levine, in February 1976, did you ever hire any -- a full time employee?

MR. DICKER: Objection.

MR. LADOV: I withdraw the question.

JUDGE NACHMAN: Withdrawn.

MR. LADOV: At this time Your Honor, I would like to offer General Counsel's Exhibit No. 31 into evidence please.

MR. DICKER: No objection.

JUDGE NACHMAN: Exhibit 31 will be received.

(The document heretofore marked as General Counsel's Exhibit No. 31 was received in evidence.)

Q (by Mr. Ladov) Did you ever inform Mr. Silverhorn in themonth of August 1975, that you were unable to hire full time salesmen?

A No. In 1975?

Q Yes.

A No. That was when I came back from vacation. I was only a week there. No. It's been -- that could not have been the time.

Q Had you ever told him in July of '75, that you --

A Possibly.

Q Possibly?

A Yes.

Q It is your testimony though, that even if you could hire full time salesmen, you didn't want all full time salesmen in your stores?

MR. DICKER: Objection. We've been through this.

JUDGE NACHMAN: It has been asked and answered.

MR. LADOV: No more questions Your HOnor.

JUDGE NACHMAN: Any redirect?

MR. DICKER: No Your Honor.

JUDGE NACHMAN: I have one question Mr. Levine. When did you last see or speak to Mr. Brower?

THE WITNESS: Give me a time reference sir.

JUDGE NACHMAN: When did you last see or speak with Mr. Brower?

THE WITNESS: Yesterday.

JUDGE NACHMAN: That's all.

All right, you are excused sir.

(Witness excused.)

JUDGE NACHMAN: Call your next witness.

MR. DICKER: Your Honor, we have no further witnesses. There is one -- two items of business. One concerns the salary of Mr. Macko. There is testimony both by Mr. Macko and by, I believe, Mr. Holmes, and an objection concerning the basis of the best evidence rule.

We have the payroll registers, which we've just got this morning.

JUDGE NACHMAN: Has Mr. Ladov examined those?

MR. DICKER: No. We've just got them this morning. Maybe if we could take a few minutes, we can do that.

JUDGE NACHMAN: All right, go ahead. See if you can reach any stipulation about it.

MR. DICKER: Other than that, I have no further evidence.

JUDGE NACHMAN: Will you have any rebuttal Mr. Ladov?

MR. LADOV: No, I will not Your Honor.

JUDGE NACHMAN: You may have your break to see if you can reach any stipulation.

MR. DICKER: May we have a brief recess?

JUDGE NACHMAN: Yes. See if you can reach any stipulation, whatever you want to stipulate, see ifyou can reach it.

Off the record.

(A short recess was taken.)

JUDGE NACHMAN: On the record.

MR. DICKER: Your Honor, with respect to Mr. Macko, I offer the following stipulations: One, that while he worked at the Monroeville Mall, and was scheduled to work, he usually worked forty hours. And after his transfer to 200 Fifth Avenue, he was scheduled to work, and usually worked forty-eight hours.

Second, that during the period January 1975, through September 1975, Mr. Macko's average earnings were a hundred and twenty-six dollars and forty-seven cents, from the period October 1975, through March 18, 1976, his average earnings were a hundred and sixty dollars and sixteen cents.

JUDGE NACHMAN: Does the party so stipulate?

MR. LADOV: So stipulated Your Honor.

JUDGE NACHMAN: All right. I have just one question. I notice that there is a difference of eight hours a week there. Does that figure enter this in anyway? How is that end result? More hours per day? Or did he work an extra day?

MR. DICKER: An extra day.

JUDGE NACHMAN: Does the party so stipulate?

MR. LADOV: The party so stipulates.

JUDGE NACHMAN: All right, the stipulations are received.

Any other stipulations?

MR. DICKER: No Your Honor.

JUDGE NACHMAN: All right. Does that conclude the testimony?

MR. DICKER: That concludes the testimony Your Honor.

JUDGE NACHMAN: Does the General Counsel have any rebuttal?

MR. LADOV: No, I do not Your Honor.

JUDGE NACHMAN: We have reached the point where you gentlemen are entitled to argue orally on the record, and to submit briefs, or both.

MR. DICKER: There is one additional item your Honor.

That we make a motion to leave the record open, until the conclusion of the Freedom Information Act and the litigations and any additional information and data, which comes into our hands as a result of that litigation, and may or may not be used in this proceeding.

JUDGE NACHMAN: THat motion will be denied.

MR. LADOV: Your Honor, I would like a motion to conform the pleadings to the proof.

JUDGE NACHMAN: You don't expect me to grant that motion, do you?

MR. LADOV: Not the --

JUDGE NACHMAN: Not in that broad a form.

You mean as to minor matters, dates and names and so on?

MR. LADOV: Of course Your Honor.

JUDGE NACHMAN: All right.

That motion I take it, you have no objection to?

MR. DICKER: Well, I don't know what minor matters are Your Honor, so I do object.

JUDGE NACHMAN: Dates, names.

MR. DICKER: The dates and names may be very critical.

JUDGE NACHMAN: All right. Thatmotion will be granted.

What is your pleasure about oral argument or brief?

MR. LADOV: General Counsel would like to waive oral arguments, and deal with all matters in a brief Your Honor.

MR. DICKER: Your HOnor, Respondent would like to do the same.

JUDGE NACHMAN: All right. I will fix the time for briefs as April 19. That means that the briefs must be received by the Chief Administrative Law Judge, in his office in Washington, D.C., on or before the date.

Do not send your briefs to me. Send them as I have indicated to the Chief Administrative Law Judge.

Any requests for extension of time likewise, should not be submitted to me, but to the Chief Administrative Law Judge. Requests must be received by him at least three days prior to the due date of the briefs, together with proof of service of all other parties in interest.

The only matter remaining is the question of exhibits.

The Board Rules require a duplicate copy of all exhibits. I don't know whether the reporter has duplicate copies or not. Let me say that the reporter is the custodian of all exhibits, and is not to release them from her custody without my prior approval.

I will however, at this time, grant approval for any party to withdraw from the reporter, any exhibit offered by that party, for the purpose of making the necessary copies on two conditions: First is that any copy must be clear and legible, and secondly, it must be returned to the reporter within five days from this date. If not so returned, the reporter will forward the transcript without that exhibit, and the exhibit will stand rejected.

Is there anything else you wish to place in the record before we close?

I hear nothing. So at this point, the record is closed.

Off the record.

(Whereupon, at 11:50 a.m., the hearing in the above-entitled matter was closed.)

General Counsel's Exhibit 1(a)

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 6-CA-8591

Date Filed 09-08-75

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: Florsheim Shoes of Pittsburgh, Inc.

b. Number of Workers Employed: 20

c. Address of Establishment (Street and number, city, State, and ZIP code): 200 Fifth Avenue, Pittsburgh, Pennsylvania 15219

d. Employer Representative to Contact: Mr. Levine

e. Phone No.

f. Type of Establishment (Factory, mine, wholesaler, etc.): Shoe Store

g. Identify Principal Product or Service: Shoes

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about August 29, 1975, the above-named employer, by its officers, agents and representatives terminated the employment of Ronald Bakowski, because of his membership in and activities on behalf of Retail Store Employees Union, Local 1407, as chartered by Retail Clerks International Association, AFL-CIO, a labor organization, because he engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection and in order to discourage membership in said labor organization. At all times since said date, and for the aforesaid reasons, the said employer has refused, and does now refuse, to employ the above-named employee.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number): Retail Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO

4a. Address (Street and number, city, State, and ZIP code): 951 Penn Avenue, Pittsburgh, Pennsylvania 15222

4b. Telephone No.: 434-8400

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization): Retail Clerks International Association, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By /s/ Gary Best (Signature of representative or person filing charge)

Organizer (Title, if any)

Address 951 Penn Avenue, Pgh., Pa. 15222

434-8400 (Telephone number)

September 8, 1975 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 961-475

General Counsel's Exhibit 1(c)

Amended

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.	DO NOT WRITE IN THIS SPACE Case No. 6-CA-8591 Date Filed 9-18-75

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer Florsheim Shoes of Pittsburgh, Inc.	b. Number of Workers Employed 20	
c. Address of Establishment (Street and number, city, State, and ZIP code) 200 Fifth Ave., Pgh., Pa. 15219	d. Employer Representative to Contact Mr. Levine	e. Phone No.
f. Type of Establishment (Factory, mine, wholesaler, etc.) Shoe store	g. Identify Principal Product or Service Shoes	

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) and (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about August 29, 1975, the above-named employer, by its officers, agents and representatives terminated the employment of Ronald Bakowski, and on September 13, 1975, terminated the employment of Douglas Foreman, Larry Paranzina, Richard Furis, William Messenger, Robert Corrigan, Andrew Holiday, Louis Scott, Arnold McGonigle, Michael Savar, James Dall, Robert Beleski, and Thomas Cappello, because of their membership in and activities on behalf of Retail Store Employees Union, Local 1407, as chartered by Retail Clerks International Association, AFL-CIO, a labor organization, because they engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection and in order to discourage membership in said labor organization. At all times since said date, and for the aforesaid reasons, the said employer has refused, and does now refuse, to employ the above-named employees.

Since on or about August 28, 1975, and at all times thereafter, the above-named employer, by its officers, agents and representatives, has failed and refused to bargain collectively and in good faith with Retail Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO, a labor organization, designated or selected by a majority of the employees of said employer in an appropriate unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment and other conditions of employment.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number)
Retail Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO

4a. Address (Street and number, city, State, and ZIP code) 951 Penn Avenue, Pittsburgh, Pennsylvania 15222	4b. Telephone No. 434-8400

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)
Retail Clerks International Association, AFL-CIO

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By ____________________ (Signature of representative or person filing charge)
Organizer (Title, if any)

Address 951 Penn Ave., Pgh., Pa. 15222
434-8400 (Telephone number)
September 19, 1975 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 661-475

General Counsel's Exhibit 1(e)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

SECOND AMENDED CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE
Case No. 6-CA-8591
Date Filed 10/29/75

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer: Florsheim Shoes of Pittsburgh, Inc.
b. Number of Workers Employed: 20
c. Address of Establishment (Street and number, city, State, and ZIP code): 200 Fifth Avenue, Pittsburgh, Pa. 15219
d. Employer Representative to Contact: Mr. Levine
e. Phone No.:
f. Type of Establishment (Factory, mine, wholesaler, etc.): Shoe store
g. Identify Principal Product or Service: Shoes

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8(a), subsections (1) and (3) & (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about August 29, 1975, the above-named employer, by its officers, agents and representatives terminated the employment of Ronald Bakowski, and on September 18, 1975, terminated the employment of Douglas Foreman, Larry Paranzino, Richard Furic, William Messenger, Robert Corrigan, Andrew Halliday, Louis Scott, Arnold McGonigle, Michael Sarver, James Ball, Robert Beleski, Thomas Cappello, and Robert Jeffries, and on September 20, 1975, transferred George Macko, because of their membership in and activities on behalf of Retail Store Employees Union, Local 1407, as chartered by Retail Clerks International Association, AFL-CIO, a labor organization, because they engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection and in order to discourage membership in said labor organization. At all times since said date, and for the aforesaid reasons, the said employer has refused, and does now refuse, to rescind the above-described discrimination against the above-named employees.

Since on or about August 28, 1975, and at all times thereafter, the above-named employer, by its officers, agents and representatives, has failed and refused to bargain collectively and in good faith with Retail Store Employees Union, Local 1407, as chartered by Retail Clerks International Association, AFL-CIO, a labor organization designated or selected by a majority of the employees of said employer in an appropriate unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number): Retail Store Employees Union, Local 1407, as chartered by Retail Clerks International Association, AFL-CIO

4a. Address (Street and number, city, State, and ZIP code): 951 Penn Avenue, Pittsburgh, Pa. 15222
4b. Telephone No.: 434-8400

5. Full Name of National or International Labor Organization of Which It Is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By ______________________ (Signature of representative or person filing charge) ______________________ (Title, if any)

Address 951 Penn Ave., Pgh., Pa. 15222 434-8400 (Telephone number) 10/29/75 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

801(a)

General Counsel's Exhibit 1(g)

NATIONAL LABOR RELATIONS BOARD

THIRD AMENDED

CHARGE AGAINST EMPLOYER

INSTRUCTIONS: File an original and 4 copies of this charge with NLRB regional director for the region in which the alleged unfair labor practice occurred or is occurring.

DO NOT WRITE IN THIS SPACE

Case No. 6-CA-8591

Date Filed 11/18/75

1. EMPLOYER AGAINST WHOM CHARGE IS BROUGHT

a. Name of Employer The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania and The Florsheim Shoe Store Company of Monroeville, Pennsylvania

b. Number of Workers Employed 21

c. Address of Establishment (Street and number, city, State, and ZIP code) 200 Fifth Ave., Pgh., Pa. 15219 and 120 Monroeville Mall, Monroeville, Pa.

d. Employer Representative to Contact Mr. Levine

e. Phone No.

f. Type of Establishment (Factory, mine, wholesaler, etc.) Shoe store

g. Identify Principal Product or Service Shoes

h. The above-named employer has engaged in and is engaging in unfair labor practices within the meaning of section 8 (a), subsections (1) and (3) & (5) (List subsections) of the National Labor Relations Act, and these unfair labor practices are unfair labor practices affecting commerce within the meaning of the Act.

2. Basis of the Charge (Be specific as to facts, names, addresses, plants involved, dates, places, etc.)

On or about August 29, 1975, the above-named employer, by its officers, agents and representatives terminated the employment of Ronald Bakowski, and on September 13, 1975, terminated the employment of and/or constructively discharged Douglas Foreman, Larry Paranzino, Richard Furis, William Messenger, Robert Corrigan, Andrew Halliday, Arnold McGonigle, Michael Sarver, James Ball, Robert Beleski, and Thomas Cappello, and on September 20, 1975, transferred George Macko, because of their membership in and activities on behalf of Retail Store Employees Union, Local 1407, as chartered by Retail Clerks International Association, AFL-CIO, a labor organization, because they engaged in concerted activities with other employees of said employer for the purpose of collective bargaining and other mutual aid and protection and in order to discourage membership in said labor organization. At all times since said date, and for the aforesaid reasons, the said employer has refused, and does now refuse, to rescind the above-described discrimination against the above-named employees.

Since on or about August 28, 1975, and at all times thereafter, the above-named employer, by its officers, agents and representatives, has failed and refused to bargain collectively and in good faith with Retail Store Employees Union, Local 1407, as chartered by Retail Clerks International Association, AFL-CIO, a labor organization designated or selected by a majority of the employees of said employer in an appropriate unit for the purpose of collective bargaining in respect to rates of pay, wages, hours of employment, and other conditions of employment.

By the above and other acts, the above-named employer has interfered with, restrained, and coerced employees in the exercise of the rights guaranteed in Section 7 of the Act.

3. Full Name of Party Filing Charge (If labor organization, give full name, including local name and number) Retail Store Employees Union, Local 1407, as chartered by Retail Clerks International Association, AFL-CIO

4a. Address (Street and number, city, State, and ZIP code) 951 Penn Avenue, Pittsburgh, Pa. 15222

4b. Telephone No. 434-8400

5. Full Name of National or International Labor Organization of Which It is an Affiliate or Constituent Unit (To be filled in when charge is filed by a labor organization)

6. DECLARATION

I declare that I have read the above charge and that the statements therein are true to the best of my knowledge and belief.

By ______ (Signature of representative or person filing charge) Organizer (Title, if any)

Address 951 Penn Ave., Pgh., Pa. 15222 434-8400 (Telephone number) 11-18-75 (Date)

WILLFULLY FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 861-475

802(a)

General Counsel's Exhibit 1(h)

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
REGION SIX

THE FLORSHEIM SHOE STORE COMPANY OF
PITTSBURGH, PENNSYLVANIA, and THE
FLORSHEIM SHOE STORE COMPANY OF
MONROEVILLE, PENNSYLVANIA

and Case No. 6-CA-8591

RETAIL STORE EMPLOYEES UNION LOCAL
1407 as chartered by RETAIL CLERKS
INTERNATIONAL ASSOCIATION, AFL-CIO

COMPLAINT AND NOTICE OF HEARING

It having been charged by Retail Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO, herein called the Union, that The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, and The Florsheim Shoe Store Company of Monroeville, Pennsylvania, herein individually called Respondent Florsheim-Pittsburgh and Respondent Florsheim-Monroeville, and collectively called Respondent, have engaged in, and are now engaging in, certain unfair labor practices affecting commerce as set forth and defined in the National Labor Relations Act, as amended, 29 U.S.C., Section 151, et seq., herein called the Act, the Acting General Counsel of the National Labor Relations Board, herein called the Board, on behalf of the Board, by the undersigned Regional Director for Region Six, pursuant to Section 10(b) of the Act and the Board's Rules and Regulations, Series 8, as amended, Section 102.15, hereby issues this Complaint and Notice of Hearing and alleges as follows:

1. A true and correct copy of the original charge filed by the Union on September 8, 1975, was duly served by registered mail on Respondent Florsheim-Pittsburgh on September 8, 1975. A true and correct copy of the amended charge filed by the Union on September 18, 1975, was duly served by registered mail on Respondent Florsheim-Pittsburgh on September 19, 1975; a true and correct copy of the second amended charge filed by the

Union on October 29, 1975, was duly served by registered mail on Respondent Florsheim-Pittsburgh on October 30, 1975; and a true and correct copy of the third amended charge filed by the Union on November 18, 1975, is hereby duly served by registered mail on Respondent Florsheim-Pittsburgh and Respondent Florsheim-Monroeville concurrently with this Complaint and Notice of Hearing.

2. (a) Respondent Florsheim-Pittsburgh, a Pennsylvania corporation with its principal office and place of business at 200 Fifth Avenue, Pittsburgh, Pennsylvania, and retail stores at 200 Fifth Avenue, 501 Smithfield Street, Northway Center Mall and South Hill Village Shopping Center, Pittsburgh, Pennsylvania, is engaged in the retail sale of shoes and clothing accessories. During the twelve-month period immediately preceding issuance of this Complaint and Notice of Hearing, Respondent Florsheim-Pittsburgh has in the course of its operations sold products valued in excess of $500,000. During the same period of time, Respondent Florsheim-Pittsburgh has received goods valued in excess of $50,000 transported to its place of business in Pennsylvania directly from States of the United States other than the Commonwealth of Pennsylvania.

(b) Respondent Florsheim-Monroeville, a Pennsylvania corporation with a retail store at the Monroeville Mall, Monroeville, Pennsylvania, is engaged in the retail sale of shoes and clothing accessories. During the twelve-month period immediately preceding issuance of this Complaint and Notice of Hearing, Respondent Florsheim-Monroeville has in the course of its operations sold products valued in excess of $500,000. During the same period of time, Respondent Florsheim-Monroeville received goods valued in excess of $50,000 transported to its place of business in Pennsylvania directly from States of the United States other than the Commonwealth of Pennsylvania.

(c) Respondent Florsheim-Pittsburgh and Respondent Florsheim-Monroeville are now, and have been at all times material herein, affiliated business enterprises with common ownership and control, common labor relations policies and constitute a single employer within the meaning of Section 2(2) of the Act.

3. Respondent is now, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

4. The Union is now, and has been at all times material herein, a labor organization within the meaning of Section 2(5) of the Act.

5. At all times material herein, the following named persons occupied the positions set opposite their respective names and have been, and are now, agents of Respondent acting on its behalf, and are supervisors and/or agents within the meaning of Section 2(11) and (13) of the Act:

Louis G. Brien - Vice President and General Manager of The Florsheim Shoe Shops

Paul R. Holmes - Administrative Assistant to Vice President and General Manager of The Florsheim Shoe Shops

Theodore Silverhorn - Regional Manager of The Florsheim Shoe Shops

H. B. Levine - District Manager and Manager of 200 Fifth Avenue retail store

B. N. Brower - Manager of 501 Smithfield Street retail store

J. R. Holleran - Manager of Northway Center Mall retail store

R. K. Rosenberry - Manager, of South Hills Village retail store

R. J. Moran - Manager of Monroeville Mall retail store

6. Respondent, by the following named supervisors and agents, on or about the dates and at the places set opposite their respective names, has interfered with, restrained and coerced, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act by the following acts and conduct:

(a) Interrogating its employees concerning their union activities, membership and sympathies, or the union activities, membership and sympathies of their fellow employees:

R. J. Moran - September 1, 20 and 27, 1975, at its Monroeville Mall retail store.

B. N. Brower - September 5, 8 and 15, 1975, at its 501 Smithfield Street retail store.

J. R. Holleran - September 8, 1975, at its Northway Center Mall retail store.

H. B. Levine - September 8 and 11, 1975, at its 200 Fifth Avenue retail store.

Theodore Silverhorn - September 9, 1975, at its 200 Fifth Avenue retail store.

(b) Threatening employees with discharge, layoff or other reprisals if the employees selected the Union as their collective-bargaining representative:

H. B. Levine - September 8, 1975, at its 200 Fifth Avenue retail store.

B. N. Brower - September 5, 1975, at its 501 Smithfield Street retail store.

J. R. Holleran - September 8, 1975, at its Northway Center Mall retail store.

(c) Suggesting to employees that they bargain individually with Respondent or form an employee committee rather than designating or selecting the Union as their collective-bargaining representative:

Theodore Silverhorn - September 9, 1975, at its 200 Fifth Avenue retail store.

J. R. Holleran - September 8, 1975, at its Northway Center Mall retail store.

(d) Creating the impression of surveillance of employees' participation in their union activities:

R. J. Moran - September 15, 1975, at its Monroeville Mall retail store.

(e) Orally promulgating an invalid no-solicitation rule:

B. N. Brower - September 20, 1975, at its 501 Smithfield Street retail store.

7. Since on or about the dates set forth below, and continuing to date, Respondent had discriminated, and is discriminating, against its employees in regard to hire or tenure of employment or terms and conditions of employment by the following acts and conduct:

(a) On or about August 29, 1975, terminating the employment of Ronald Bakowski.

(b) On or about September 18, 1975, by discharging, or constructively discharging, the following named employees:

Douglas Foreman
Larry Paranzino
Richard Furis
William Messenger
Robert Corrigan
Andrew Halliday
Arnold McGonigle
Michael Sarver
James Ball
Robert Beleski
Thomas Cappello

(c) On or about September 20, 1975, transferring employee George Macko from Respondent's Monroeville Mall retail store to its 200 Fifth Avenue retail store.

8. Respondent did discharge, or constructively discharge, and transfer the employees as set forth in paragraph 7 above, and has failed and refused to reinstate them because of their activities on behalf of the Union and because they engaged in concerted activities with other employees for the purpose of collective bargaining and mutual aid and protection, and in order to discourage membership in the Union.

9. The following employees of Respondent constitute an appropriate unit for the purpose of collective bargaining within the meaning of Section 9(b) of the Act:

> All full-time and regular part-time selling and nonselling employees employed by The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, and The Florsheim Shoe Store Company of Monroeville, Pennsylvania, at their retail stores at 200 Fifth Avenue, 501 Smith-Field Street, Northway Center Mall and South Hills Village Shopping Center in Pittsburgh, Pennsylvania, and at their retail store at Monroeville Mall, Monroeville, Pennsylvania; excluding office clerical employees and guards, professional employees and supervisors as defined in the Act.

10. At all times since on or about August 28, 1975, and continuing to date, the Union, having been designated or selected by a majority of the

employees in the unit described in paragraph 9 above, has been the representative for the purposes of collective bargaining of all such employees and, by virtue of Section 9(a) of the Act, has been, and is now, the exclusive representative of all the employees in said unit for the purpose of collective bargaining with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

11. Since on or about August 29, 1975, and at all times thereafter, the Union has requested, and is now requesting, Respondent to bargain collectively with it as the exclusive representative of all employees in the unit described in paragraph 9 above with respect to rates of pay, wages, hours of employment and other terms and conditions of employment.

12. Since on or about August 29, 1975, and at all times thereafter, Respondent has failed and refused, and continues to fail and refuse, to recognize and to bargain collectively and in good faith with the Union, nothwithstanding the fact that the Union was at the time, and continues to be, the duly designated exclusive bargaining representative of all the employees in the unit described in paragraph 9 above.

13. By the acts described in paragraph 12 above, and by each of said acts, Respondent did refuse to bargain collectively, and is refusing to bargain collectively, with the representative of its employees, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and Section 2(6) and (7) of the Act.

14. By the acts described in paragraphs 7 and 8 above, and by each of said acts, Respondent did discriminate, and is discriminating, in regard to hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and Respondent did thereby engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

15. By the acts described in paragraphs 6, 7, 8 and 12 above, and by each of said acts, Respondent did interfere with, restrain and coerce, and is interfering with, restraining and coercing, its employees in the exercise of the rights guaranteed in Section 7 of the Act, and thereby did engage in, and is engaging in, unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

16. The acts of Respondent described in paragraphs 6, 7, 8 and 12 above, occurring in connection with the operations of Respondent described in paragraphs 2 and 3 above, have a close, intimate and substantial relation to trade, traffic and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

17. The acts of Respondent described above constitute unfair labor practices affecting commerce within the meaning of Section 8(a)(1), (3) and (5) and Section 2(6) and (7) of the Act, and are so serious and substantial in character and effect as to warrant the enery of a remedial order requiring Respondent to recognize and bargain with the Union in the appropriate unit described above in paragraph 7.

PLEASE TAKE NOTICE that on the 5th day of February 1976 and consecutive days thereafter until concluded, at ten o'clock in the forenoon, Eastern Standard Time, in the Hearing Room of the National Labor Relations Board, 1529 Federal Building, 1000 Liberty Avenue, Pittsburgh, Pennsylvania, a hearing will be conducted before a duly designated Administrative Law Judge of the National Labor Relations Board on the allegations set forth in the above Complaint, at which time and place you will have the right to appear in person, or otherwise, and give testimony.

Form NLRB-4668, a summary of standard procedures in formal hearings held before the National Labor Relations Board in unfair labor practice cases, is attached.

You are further notified that, pursuant to Section 102.20 and 102.21 of the Board's Rules and Regulations, Series 8, as amended, Respondent shall file with the undersigned Regional Director, acting in this matter as agent of the National Labor Relations Board, an original and four (4) copies of an Answer to said Complaint within ten (10) days from the service thereof, and that unless the Respondent does so all of the allegations in the Complaint shall be deemed to be admitted to be true and may be so found by the Board. Immediately upon the filing of its Answer, Respondent shall serve a copy thereof on each of the other parties.

Dated at Pittsburgh, Pennsylvania, this 26th day of November 1975.

Henry Shore
Regional Director, Region Six

National Labor Relations Board
1536 Federal Building
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222

810(a)

General Counsel's Exhibit (1n)

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

REGION SIX

THE FLORSHEIM SHOE STORE COMPANY OF
PITTSBURGH, PENNSYLVANIA, and THE
FLORSHEIM SHOE STORE COMPANY OF
MONROEVILLE, PENNSYLVANIA

Case No. 6-CA-8591

and

RETAIL STORE EMPLOYEES UNION LOCAL
1407 as chartered by RETAIL CLERKS
INTERNATIONAL ASSOCIATION, AFL-CIO

Respondent, The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, and The Florsheim Shoe Store Company of Monroeville, Pennsylvania ("Respondent"), by its attorneys Proskauer Rose Goetz & Mendelsohn, alleges as its answer to the Complaint:

1. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 1 of the Complaint, except admits that Respondent has received charges on or after the dates specified.

2. Admits the allegations of paragraphs 2 and 3 of the Complaint.

3. Denies knowledge or information sufficient to form a belief as to the allegations contained in paragraph 4 of the Complaint.

4. Admits the allegations of paragraph 5 of the Complaint, except states that Mr. Brien is General Manager, but not Vice President of The Florsheim Shoe Shops.

5. Denies the allegations contained in paragraph 6 of the Complaint.

6. Denies the allegations of paragraph 7 of the Complaint except admits a) that Bakowski was terminated for cause on or about August 29, 1975, b) that the individuals named in paragraph 7b of the Complaint were part-time salesmen employed by Respondent and that Respondent, implementing plans based entirely on business considerations which plans had been formulated before August 29, 1974, decided to employ only full-time saleshelp and offered such positions to each individual named in paragraph 7b but that each individual declined to work the hours Respondent required; and c) that Macko was transferred to the 200 Fifth Avenue retail store for valid business reasons with his consent.

7. Denies the allegations contained in paragraph 8 of the Complaint.

8. Answers the allegations contained in paragraph 9 of the Complaint by stating that an appropriate unit for collective bargaining purposes must be determined by hearing before The National Labor Relations Board, that no such hearing has been held, and that neither The National Labor Relations Board nor The

Regional Director of Region Six has determined what unit of Respondent's employees would be appropriate for collective bargaining purposes.

9. Denies the allegations contained in paragraph 10 of the Complaint.

10. Denies the allegations contained in paragraph 11 of the Complaint except admits that on or about August 29, 1974 it received a communication from the Union demanding recognition.

11. Answers the allegations contained in paragraph 12 of the Complaint by stating that Respondent has not bargained with the Union since at no time has the Union demonstrated its majority support among the unit it claims to represent and at no time has the Union been certified by The National Labor Relations Board as the duly designated collective bargaining representative of any of Respondent's employees.

12. Denies the allegations contained in paragraphs 13, 14, 15, 16 and 17 of the Complaint.

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

13. During the course of the investigation of the charge in this case, agents of The National Labor Relations Board intimidated, coerced, threatened and sought to influence

prospective witnesses who were reluctant to meet with or give statements to said agents.

14. As a result of such tactics, the entire investigation of the charge and issuance of the Complaint in this case were irrevocably tainted.

15. By reason of the foregoing, this Complaint should be dismissed.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

16. On Friday, December 5, 1975, Respondent, by its attorneys, mailed to Henry Shore, Esq., Regional Director of Region Six of The National Labor Relations Board a Freedom of Information Act Request seeking certain information contained in the case files for Case No. 6-CA-8591, to which Respondent is entitled under said Act. A copy of this letter is annexed as Exhibit A.

17. In that letter, it was noted that the information sought was necessary to Respondent in preparing an Answer to the Complaint. Pursuant to 29 CFR §102.22, request was made to extend the time to answer until ten working days from the date Respondent received the requested material.

18. The Regional Director replied to this letter by letter dated December 18, 1975, attached hereto as Exhibit B.

The Regional Director improperly denied the request in its entirety, making absolutely no effort to forward to Respondent segregable portions of the documents sought after the deletion of exempt portions, as required by 5 USC §552(b) and, further, taking positions with respect to the disclosure of information sought which are contrary to the weight of judicial authority.

19. Respondent is presently preparing an appeal of the Regional Director's ruling, pursuant to 29 CFR §102.117(c)(2)(ii).

20. As a result of the Regional Director's failure to supply Respondent with information to which the Respondent is entitled under the Freedom of Information Act, Respondent has been hindered in the preparation of this Answer and in the preparation of its defense in this case.

21. By reason of the foregoing, this Complaint should be dismissed.

WHEREFORE, Respondent demands that the Complaint be dismissed.

PROSKAUER ROSE GOETZ & MENDELSOHN
Attorneys for The Florsheim Shoe
Store Company of Pittsburgh,
Pennsylvania and The Florsheim
Shoe Store Company of Monroeville,
Pennsylvania

By____________________
Marvin Dicker

300 Park Avenue
New York, New York 10022

Dated: New York, New York
December 30, 1975

(General Counsel's Exhibit ((1r)

NATIONAL LABOR RELATIONS BOARD
REGION 6
10th Floor, Porter Building, 601 Grant Street
Pittsburgh, Pennsylvania 15219
Telephone (412) 644-2977

February 23, 1976

Re: The Florsheim Shoe Store Company of
Pittsburgh, Pennsylvania, and The
Florsheim Shoe Store Company of
Monroeville, Pennsylvania
Case No. 6-CA-8591

Marvin Dicker, Esquire
Proskauer, Rose, Goetz & Mendelsohn
300 Park Avenue
New York, New York 10022

Dear Mr. Dicker:

This is to confirm my conversation of February 19, 1976, with your associate Mr. Sulds, at which time I informed him of Counsel for the General Counsel's, intention to move to amend at the hearing paragraph 6 of the Complaint and Notice of Hearing to further include the following:

> Paragraph 6(a) by J. R. Holleran in or about early August 1975, and in or about early September 1975, at Respondent's Northway Center Mall retail store; and by Theodore Silverhorn on or about September 9, 1975, at Respondent's South Hills Village Shopping Center retail store.
>
> Paragraph 6(b) by J. R. Holleran in or about early September 1975, at Respondent's Northway Center Mall retail store.

If you have any questions, please do not hesitate to contact me at 412/644-3430.

Thank you for your cooperation in this matter.

Very truly yours,

E. Donald Ladov

E. Donald Ladov
Attorney

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

cc: Retail Store Employees Union Local
1407, as chartered by Retail Clerks
International Association, AFL-CIO
Mr. Gary K. Best, Organizer
951 Penn Avenue
Pittsburgh, Pennsylvania 15222

Page 2: Other parties receiving copy

General Counsel's Exhibit 2

EMPLOYEE PAYROLL LIST AS OF AUGUST 28, 1975

200 Fifth Avenue

J. G. Schneider
A. A. McGonigle
J. P. Ball

501 Smithfield

M. G. Flaherty
D. Foreman
L. Paranzino
L. Scott
R. J. Bakowski

Northway Center

G. Koritsky
R. L. Corrigan
R. D. Furis
W. G. Messenger
A. J. Halliday

South Hills

T. D. O'Neil
M. J. Kelly
R. A. Jeffreys
J. G. Bittner

Monroeville Mall

R. M. Belesky
G. Macko
J. L. Osselburn
M. T. Sarver
T. A. Cappello

General Counsel's Exhibit 3

LIST OF EMPLOYEES AS OF SEPTEMBER 18, 1975

200 Fifth Avenue

Macko
Schneider
Gaines

501 Smithfield

Flaherty
Wolf
Fredericks

Northway Center

Koritsky
Christensen

South Hills

Kelly
O'Neil
Watson

Monroeville Mall

Osselburn
Sennigton
Federschmidt

818(a)

General Counsel's Exhibit 4(a)

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME Orselhern
FIRST NAME Joseph
INITIAL L
SEX M
DATE OF BIRTH 7/13/40
SOCIAL SECURITY NO. 203-30-435
ADDRESS 206 Ferkin Ave
CITY Pgh
STATE PA
ZIP CODE 15221
HOME PHONE 243-9508
MARRIED ☐ SINGLE ☑
REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☐ YES ☐ NO
DATE OF HIRE 11/10/71
EMPLOYER'S NAME Florsheim Shoe Shop
BUSINESS ADDRESS Ro Monroeville MALL
☒ FULL TIME ☐ PART TIME
TYPE WORK PERFORMED SALESMAN
PREVIOUS AFFILIATION, LOCAL NUMBER NO
LOCAL UNION USE ONLY
APPLICANT'S SIGNATURE x Joseph L Orselhern
DATE SIGNED 3/26/75
LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE
AFFILIATION DATE -1-

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
☐ NEWLY INITIATED
☐ REINSTATE FROM SUSPENSION
☐ ADMIT (TRANSFER WITHIN 30 DAYS)
☐ CANCEL WITHDRAWAL
☐ REINSTATE FROM WITHDRAWAL
☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: Florsheim Shoe Co.
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

3-26-75
Date

Joseph L Orselhern
Employee's Signature

LABOR RELATIONS BOARD

Docket No. 6-CA-8547 OFFICIAL EXHIBIT NO. GC#4 (A)

Disposition
Identified ✓
Received ✓
Rejected

In the matter of Florsheim Shoe Store Co.

Date 3-3-76 Witness Reporter G T

No. Pages

N.L.R.B.
REGION 6 - PITTSBURGH
'75 AUG 28 PM 12:29

recieved on 3/26/75
at Bar in the Mall DKB

General Counsel's Exhibit 4(b)

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME BELESKY	FIRST NAME ROBERT	INITIAL M	SEX M	DATE OF BIRTH 09/15/56	SOCIAL SECURITY NO. 181-44-2875

ADDRESS 201 CARSON STREET	CITY EAST McKEESPORT	STATE PA	ZIP CODE 15035

HOME PHONE 824-3806

MARRIED ☐ SINGLE ☒

REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☒ YES ☐ NO

DATE OF HIRE 09/15/72

EMPLOYER'S NAME FLORSHEIM SHOE CO.

BUSINESS ADDRESS 120 MONROEVILLE MALL

☐ FULL TIME ☒ PART TIME

TYPE WORK PERFORMED SALESMAN

PREVIOUS AFFILIATION, LOCAL NUMBER

LOCAL UNION USE ONLY

[illegible]

APPLICANT'S SIGNATURE x Robert Mark Belesky

DATE SIGNED 3/26/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE / /

FOR LOCAL UNION USE ONLY

BASIS FOR MEMBERSHIP:
* CHECK ONE
- ☐ NEWLY INITIATED
- ☐ REINSTATE FROM SUSPENSION
- ☐ ADMIT (TRANSFER WITHIN 30 DAYS)
- ☐ CANCEL WITHDRAWAL
- ☐ REINSTATE FROM WITHDRAWAL
- ☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407

CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: Florsheim Shoe Co.
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

3-26-75
Date

Robert Mark Belesky
Employee's Signature

[illegible] RELATIONS BOARD

Case No. 6-CA-2591 OFFICIAL EXHIBIT No. GC # 4(B)

Disposition
- Identified ✓
- Received ✓
- Rejected

In the matter of Florsheim Shoe Store Co.

Date 3-3-76 Witness ______ Reporter C T

No. Pages

N.L.R.B.
REGION 6 - PITTSBURGH
'75 AUG 28 PM 12:29

received on 3/26/75
at Box in the Mail DKB

822(a)

General Counsel's Exhibit 4(c)

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME: MACKO
FIRST NAME: GEORGE
INITIAL: J
SEX: M
DATE OF BIRTH: 7/24/43
SOCIAL SECURITY NO.: 175-34-7663

ADDRESS: 277 WELSH AVE
CITY: WILMERDING
STATE: PA
ZIP CODE: 15148

HOME PHONE: 823-6338
MARRIED ☒
SINGLE ☐
REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☑ YES ☐ NO
DATE OF HIRE: 4/13/71

EMPLOYER'S NAME: FLORSHEIM SHOE CO
BUSINESS ADDRESS: 120 MONROEVILLE MALL
☒ FULL TIME
☐ PART TIME

TYPE WORK PERFORMED: SALESMAN
PREVIOUS AFFILIATION, LOCAL NUMBER: NONE
LOCAL UNION USE ONLY

I hereby make application for membership in the RETAIL CLERKS INTERNATIONAL ASSOCIATION and affirm that the above statements are true, and I agree that all monies paid by me shall be forfeited and my membership cancelled void if they are not true. I authorize the RETAIL CLERKS INTERNATIONAL ASSOCIATION to represent me for the purposes of collective bargaining and handling of grievances, either directly or through such local union as it may designate.

APPLICANT'S SIGNATURE: x George J. Macko
DATE SIGNED: 3/26/75
LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE
AFFILIATION DATE: 1

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
☐ NEWLY INITIATED
☐ REINSTATE FROM SUSPENSION
☐ ADMIT (TRANSFER WITHIN 30 DAYS)
☐ CANCEL WITHDRAWAL
☐ REINSTATE FROM WITHDRAWAL
☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407

CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: FLORSHEIM SHOE CO.
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

Date: 3-26-75

Employee's Signature: George J. Macko

N.L.R.B.
REGION 6 - PITTSBURGH
'75 AUG 28 PM 12:29

NATIONAL LABOR RELATIONS BOARD

Case No. 6-CA-8591 Official Exhibit No. GC # 4(c)

Disposition
- Identified ✓
- Received ✓
- Rejected

In the matter of Flossheim Shoe Store Co

Date 3-3-76 Witness ______ Reporter G T

No. Pages

received on 3/26/75
At Box in the Mall DKB

General Counsel's Exhibit 5

RETAIL STORE EMPLOYEES UNION
LOCAL 1407
CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO
951 PENN AVENUE — PITTSBURGH, PA 15222
TELEPHONE: 434-8400 — A/C-412

23

President
JOSEPH A. SORBARA
Secretary-Treasurer
JOHN L. BODENHEMIER

August 28, 1975

Mr. H. B. Levine
Florsheim Shoe Company
200 Fifth Avenue
Pittsburgh, Pennsylvania 15219

Dear Mr. Levine:

Please be advised that Retail Store Employees Union, Local 1407, AFL-CIO, located at 951 Penn Avenue, Pittsburgh, Pennsylvania 15222, represents a majority of the employees working in your stores d/b/a Florsheim Shoe Stores within Allegheny County, Pennsylvania.

We wish to receive recognition as bargaining agent for all full-time and part-time selling and non-selling employees, and to begin negotiations for an agreement. We are prepared to supply proof of our majority position and we are willing to meet with you at your earliest convenience for this purpose.

You may reach me at (412) 434-8400.

Very truly yours,

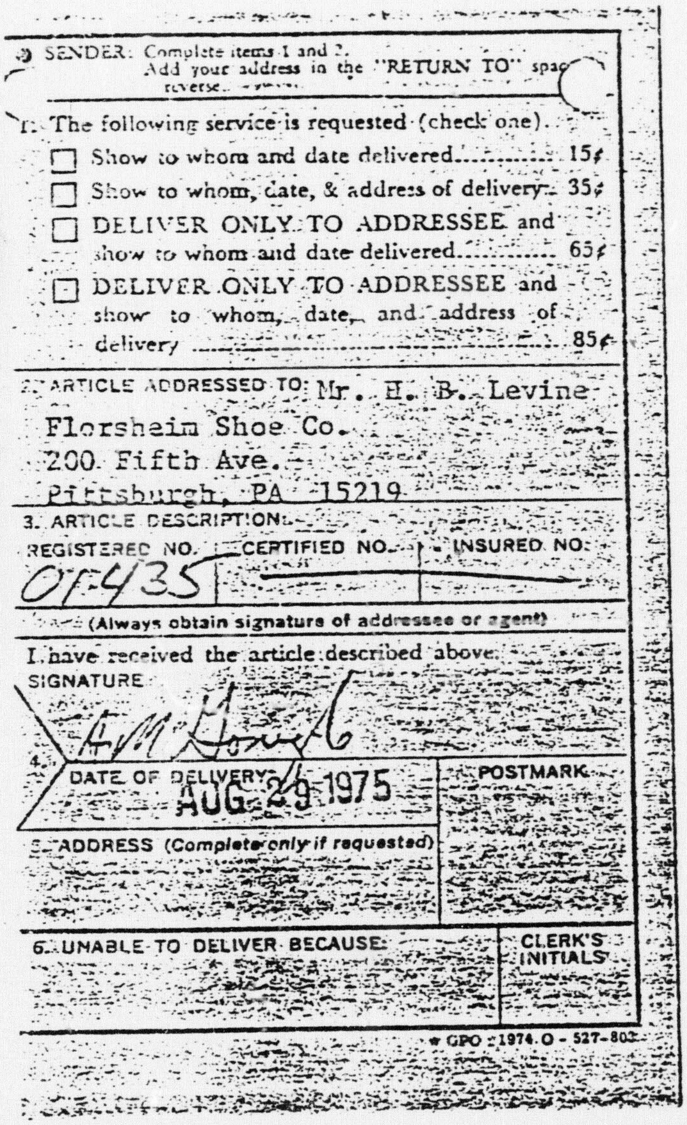
RETAIL STORE EMPLOYEES UNION,
LOCAL 1407

Gary K. Best,
Organizer

Joseph A. Sorbara,
President

dg-opeiu#33

General Counsel's Exhibit 6



SENDER: Complete items 1 and 2.
Add your address in the "RETURN TO" space on reverse.

1. The following service is requested (check one).
- ☐ Show to whom and date delivered .... 15¢
- ☐ Show to whom, date, & address of delivery .. 35¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom and date delivered .... 65¢
- ☐ DELIVER ONLY TO ADDRESSEE and show to whom, date, and address of delivery .... 85¢

2. ARTICLE ADDRESSED TO: Mr. H. B. Levine
Florsheim Shoe Co.
200 Fifth Ave.
Pittsburgh, PA 15219

3. ARTICLE DESCRIPTION:

REGISTERED NO.	CERTIFIED NO.	INSURED NO.
07435		

(Always obtain signature of addressee or agent)

I have received the article described above.
SIGNATURE

4. DATE OF DELIVERY: AUG 29 1975
POSTMARK

5. ADDRESS (Complete only if requested)

6. UNABLE TO DELIVER BECAUSE:
CLERK'S INITIALS

★ GPO : 1974 O - 527-803

General Counsel's Exhibit 7

RETAIL STORE EMPLOYEES UNION
LOCAL 1407
CHARTERED BY THE RETAIL CLERKS INTERNATIONAL ASSOCIATION, AFL-CIO
951 PENN AVENUE — PITTSBURGH, PA 15222
TELEPHONE: 434-8400 — A/C-412
23

President
JOSEPH A. SORBARA
Secretary-Treasurer
JOHN L. BODENHEMIER

August 28, 1975

Mr. L. G. Brien
Florsheim Shoe Company
130 South Canal Street
Suite 200
Chicago, Illinois 60606

Dear Mr. Brien:

Please be advised that Retail Store Employees Union, Local 1407, AFL-CIO, located at 951 Penn Avenue, Pittsburgh, Pennsylvania 15222, represents a majority of the employees working in your stores d/b/a Florsheim Shoe Stores within Allegheny County, Pennsylvania.

We wish to receive recognition as bargaining agent for all full-time and part-time selling and non-selling employees, and to begin negotiations for an agreement. We are prepared to supply proof of our majority position and we are willing to meet with you at your earliest convenience for this purpose.

You may reach me at (412) 434-8400.

Very truly yours,

RETAIL STORE EMPLOYEES UNION,
LOCAL 1407

Cary K. Best,
Organizer

Joseph A. Sorbara,
President

dg-opeiu#33

827(a)

General Counsel's Exhibit 8 FLORSHEIM SHOES

MEETING ATTENDANCE

DATE 9-4-75 TIME 10:00 PM PLACE UNION HALL

	NAME	COMPANY & STORE NUMBER
1.	[illegible] Schneider	Florsheim [illegible] 48806
2.	[illegible]	Florsheim Northway Mall 48810
3.	Arnold H. McGonigle	Florsheim 200 5th Ave.
4.	[illegible] Ball	Florshem 200 5th AVE.
5.	[illegible]	FLORSHEIM 501 Smithfield St.
6.	[illegible]	Florsheim 501 Smithfield St.
7.	Donald [illegible]	Florsheim 501 Smithfield St
8.	Peter [illegible]	Florsheim Northway Mall 488[illegible]
9.	William [illegible]	FSS Northway Mall 48810
10.	[illegible]	FSS Monroeville
11.	[illegible]	FSS Monroeville
12.	[illegible]	FSS Monroeville
13.		
14.		
15.		
16.		
17.		
18.		
19.		
20.		
21.		
22.		
23.		
24.		

828(a)
General Counsel's Exhibit 9

Form NLRB-502
(11-64)

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

Form Approved
Budget Bureau No. 64-R002.14

PETITION

DO NOT WRITE IN THIS SPACE
CASE NO 6-RC-7236
DATE FILED 08-28-75

INSTRUCTIONS — Submit an original and four (4) copies of this Petition to the NLRB Regional Office in the Region in which the employer concerned is located. If more space is required for any one item, attach additional sheets, numbering item accordingly.

The Petitioner alleges that the following circumstances exist and requests that the National Labor Relations Board proceed under its proper authority pursuant to Section 9 of the National Labor Relations Act.

1. Purpose of this Petition *(If box RC, RM or RD is checked and a charge under Section 8(b)(7) of the Act has been filed involving the Employer named herein, the statement following the description of the type of petition shall not be deemed made.)*

(Check one)

☒ RC-CERTIFICATION OF REPRESENTATIVE — A substantial number of employees wish to be represented for purposes of collective bargaining by Petitioner and Petitioner desires to be certified as representative of the employees.

☐ RM-REPRESENTATION (EMPLOYER PETITION) — One or more individuals or labor organizations have presented a claim to Petitioner to be recognized as the representative of employees of Petitioner.

☐ RD-DECERTIFICATION — A substantial number of employees assert that the certified or currently recognized bargaining representative is no longer their representative.

☐ UD-WITHDRAWAL OF UNION SHOP AUTHORITY — Thirty percent (30%) or more of employees in a bargaining unit covered by an agreement between their employer and a labor organization desire that such authority be rescinded.

☐ UC-UNIT CLARIFICATION — A labor organization is currently recognized by employer, but petitioner seeks clarification of placement of certain employees: *(Check one)* ☐ In unit not previously certified ☐ In unit previously certified in Case No. ____________

☐ AC-AMENDMENT OF CERTIFICATION — Petitioner seeks amendment of certification issued in Case No. ____________

Attach statement describing the specific amendment sought.

2. NAME OF EMPLOYER: Florsheim Shoe Corporation

EMPLOYER REPRESENTATIVE TO CONTACT: H. B. Levine, Gen. Mgr.

PHONE NO:

3. ADDRESS(ES) OF ESTABLISHMENT(S) INVOLVED *(Street and number, city, State, and ZIP Code)*: 200 5th Avenue, Pittsburgh, Pa. 15219

4a. TYPE OF ESTABLISHMENT *(Factory, mine, wholesaler, etc.)*: Retail Store

4b. IDENTIFY PRINCIPAL PRODUCT OR SERVICE: Men's Shoes & Accessories

5. Unit Involved *(In UC petition, describe PRESENT bargaining unit and attach description of proposed clarification.)*

Included: All full-time and regular part-time selling and nonselling personnel employed by the Employer at its Monroeville Mall, South Hills Village, Northway Mall, 200 Fifth Avenue, Pittsburgh, Pennsylvania and 501 Smithfield Street, Pittsburgh, Pennsylvania, stores;

Excluded: All other employees, confidential employees and guards, professional employees and supervisors as defined in the Act.

6a. NUMBER OF EMPLOYEES IN UNIT:
PRESENT 20
PROPOSED (BY UC/AC) ____________

6b. IS THIS PETITION SUPPORTED BY 30% OR MORE OF THE EMPLOYEES IN THE UNIT?* ☒ YES ☐ NO

*Not applicable in RM, UC, and AC

(If you have checked box RC in 1 above, check and complete EITHER item 7a or 7b, whichever is applicable)

7a. ☒ Request for recognition as Bargaining Representative was made on August 28, 1975 *(Month, day, year)* and Employer declined recognition on or about no reply *(Month, day, year)* *(If no reply received, so state)*

7b. ☐ Petitioner is currently recognized as Bargaining Representative and desires certification under the act.

8. Recognized or Certified Bargaining Agent *(If there is none, so state)*

NAME: NONE

AFFILIATION:

ADDRESS:

DATE OF RECOGNITION OR CERTIFICATION:

9. DATE OF EXPIRATION OF CURRENT CONTRACT, IF ANY *(Show month, day, and year)*:

10. IF YOU HAVE CHECKED BOX UD IN 1 ABOVE, SHOW HERE THE DATE OF EXECUTION OF AGREEMENT GRANTING UNION SHOP *(Month, day, and year)*:

11a. IS THERE NOW A STRIKE OR PICKETING AT THE EMPLOYER'S ESTABLISHMENT(S) INVOLVED? YES ____ NO X

11b. IF SO, APPROXIMATELY HOW MANY EMPLOYEES ARE PARTICIPATING?

11c. THE EMPLOYER HAS BEEN PICKETED BY OR ON BEHALF OF ____________ *(Insert name)* A LABOR ORGANIZATION, OF ____________ *(Insert address)* SINCE ____________ *(Month, day, year)*

12. ORGANIZATIONS OR INDIVIDUALS OTHER THAN PETITIONER (AND OTHER THAN THOSE NAMED IN ITEMS 8 AND 11c), WHICH HAVE CLAIMED RECOGNITION AS REPRESENTATIVES AND OTHER ORGANIZATIONS AND INDIVIDUALS KNOWN TO HAVE A REPRESENTATIVE INTEREST IN ANY EMPLOYEES IN THE UNIT DESCRIBED IN ITEM 5 ABOVE (IF NONE, SO STATE)

NAME	AFFILIATION	ADDRESS	DATE OF CLAIM *(Required only if Petition is filed by Employer)*
NONE			

I declare that I have read the above petition and that the statements therein are true to the best of my knowledge and belief.

Retail Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO
(Petitioner and affiliation, if any)

By ____________ *(Signature of representative or person filing petition)*

Organizer *(Title, if any)*

Address 951 Penn Avenue, Pittsburgh, Pa. 15222 *(Street and number, city, State, and ZIP Code)*

434-3400 *(Telephone number)*

WILLFULLY FALSE STATEMENT ON THIS PETITION CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)

GPO 896-179

829(a)

General Counsel's Exhibit 10

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME Cappello
FIRST NAME Thomas
INITIAL A
SEX M
DATE OF BIRTH 4/20/48
SOCIAL SECURITY NO. 267-38-2022

ADDRESS 9044 Pine Heights Place
CITY Pittsburgh
STATE Pa.
ZIP CODE 15237

HOME PHONE 361-1014
MARRIED ☒ SINGLE ☐
REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☐ YES ☒ NO
DATE OF HIRE 6/1/73

EMPLOYER'S NAME Florsheim Shoes
BUSINESS ADDRESS 120 Monroeville Mall Monroeville, Pa
☐ FULL TIME ☒ PART TIME

TYPE WORK PERFORMED Shoe Sales
PREVIOUS AFFILIATION, LOCAL NUMBER
LOCAL UNION USE ONLY

[illegible]

APPLICANT'S SIGNATURE x Thomas A. Cappello
DATE SIGNED 3/29/75
LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE
AFFILIATION DATE /

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
- ☐ NEWLY INITIATED
- ☐ REINSTATE FROM SUSPENSION
- ☐ ADMIT (TRANSFER WITHIN 30 DAYS)
- ☐ CANCEL WITHDRAWAL
- ☐ REINSTATE FROM WITHDRAWAL
- ☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: The Florsheim Shoe Co
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

Thomas A. Cappello
Employee's Signature

Date

recieved in mail 4/7/75
DKB

N.L.R.B.
REGION 6 - PITTSBURGH
'75 AUG 20 PM 12:29

LABOR RELATIONS BOARD
Docket No. 6-CA-8341 OFFICIAL EXHIBIT No. GC #10
Disposition Identified ✓ Received ✓ Rejected
In the matter of Flossheim Shoe Store Co.
Date 3-3-76 Witness ________ Reporter GT
No. Pages

831(a)

General Counsel's Exhibit 11

GC-11

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME BAKOWSKI	FIRST NAME RONALD	INITIAL J	SEX M	DATE OF BIRTH 11 16 42	SOCIAL SECURITY NO. 174-34-6384

ADDRESS 421 PARKLOW ST.	CITY PITTSBURGH	STATE PA.	ZIP CODE 15210

HOME PHONE 381-1565

MARRIED ☐ SINGLE ☒

REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☒ YES ☐ NO

DATE OF HIRE 5 1 68

EMPLOYER'S NAME FLORSHEIM SHOE CO-PGH

BUSINESS ADDRESS 501 SMITHFIELD

☒ FULL TIME ☐ PART TIME

TYPE WORK PERFORMED SALESMAN

PREVIOUS AFFILIATION, LOCAL NUMBER

LOCAL UNION USE ONLY

[illegible]

APPLICANT'S SIGNATURE X Ronald J Bakowski

DATE SIGNED 8/25/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE / /

FOR LOCAL UNION USE ONLY

BASIS FOR MEMBERSHIP:
* CHECK ONE

- ☐ NEWLY INITIATED
- ☐ REINSTATE FROM SUSPENSION
- ☐ ADMIT (TRANSFER WITHIN 30 DAYS)
- ☐ CANCEL WITHDRAWAL
- ☐ REINSTATE FROM WITHDRAWAL
- ☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE

☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION—LOCAL UNION No. 1407

CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: FLORSHEIM SHOE CO—PITTSBURGH
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8/25/75
Date

Ronald J Bakowski
Employee's Signature

recieved
in mail
8-27-75
SKB

N.L.R.B.
REGION 6 - PITTSBURGH
'75 AUG 28 PM 12:28

LABOR RELATIONS BOARD
Docket No. 6-CA-2591 Official Exhibit No. CC#11
Disposition { Identified ✓
Received ✓
Rejected
In the matter of Florsheim Shoe Store Co.
Date 3-3-76 Witness Reporter CT
No. Pages

12

General Counsel's Exhibit 12

105

The Florsheim Shoe Shops **Internal Correspondence**

Aug. 28, 75.

To:- Mr. R. J. Bakowski

This is to inform you that after all of my efforts to get you to change your attitude concerning your constant "Lown" feelings with regards to your fellow employees and your Job here, you've left no other choice for me other than to terminate your employment with the Florsheim Shoe Co.

I feel this is both for your personal well being as well as stores benifit.

May I sincerly wish you good luck in your future endeavors.

Cordially.

B. N. Brower

General Counsel's Exhibit 13

EMPLOYEE CHANGE NOTICE

☐ New Hire original sent to
☐ Permanent Transfer retail payroll
☒ Termination

FLORSHEIM SHOE SHOP
501 S[illegible]FIELD
PITTSBURGH, PENNA.
ZIP 15222
ZONE 4

TO BE FILLED OUT IN ALL CASES

Store Number [illegible] Dept. 01 48805 Store Name
Employee Number [illegible]
Employee Name R[illegible] J. Bakowski
Employee Address 431 Parkview St.
Employee City, State, Zip Code Pgh. Pa.
Employee Social Security No. 174-34-[illegible]

TO BE FILLED OUT FOR NEW HIRES ONLY

NEW HIRE INFORMATION ONLY

Marital Status ☐ M ☐ S ☐ H of H Number of Exemptions Claimed ____ Fed ☐ State ☐ City ☐
Salary
Commission
Position
Date of Birth
Starting Date

TO BE FILLED OUT FOR TRANSFERS ONLY

TRANSFER INFORMATION ONLY

Transfer Date
From Store
To Store
Name — Address — — Store No.
Salary

TO BE FILLED OUT FOR TERMINATION ONLY

TERMINATION INFORMATION ONLY

Termination Date Aug. 25 1975
Quit ☐ Discharged ☒ Reason: Have repeated efforts [illegible] trying to get this man out of his constantly [illegible] attitude and his unwillingness to get along with fellow employees
Would You Rehire? Yes ☐ No ☒ If ~~no give reason~~: and constantly complaining I feel it best for the stores benefit that Mr Bakowski seek employment elsewhere.

Date Aug 25 1975 Signed [illegible]
Store Manager

[illegible] G.M.

83[illegible](a)

General Counsel's Exhibit 14

THE FLORSHEIM SHOE SHOPS
29 EAST MADISON STREET
CHICAGO, ILL. 60602

GENERAL OFFICES

TELEPHONE
(312) 372-6636

August 20, 1970

Mr. R. J. Bakowski
c/o The FLORSHEIM Shoe Shop
Northway Center
2124 Northway Mall
Pittsburgh, Pennsylvania 15237

Dear Mr. Bakowski:

The attached correspondence from Mr. Art Chalker was extremely gratifying to receive.

Please continue this fine level of service to all of our customers.

Cordially,

THE FLORSHEIM SHOE SHOPS

By J. B. Howell /ck
J. B. Howell

General Counsel's Exhibit 15

JRSHEIM SHOE SHOPS

ART CHALKER

CC: Mr. R. B. Levine
Mr. R. J. Moran
Mr. R. J. Bakowski

8/5/75

To whom it may concern:

I would like to [illegible]ke this opportunity to express my gratitude, for a courteous display of accomodation, on the part of MR. R.J. BAKOWSKI, Assistant Manager, Florsheim Shoes, Northway Mall, Pittsburgh, Pa..

A telephone call to explain my problem, and a subsequent visit, all resulted in my problem being very satisfactorily

ORSHEIM SHOE CO.
EAST MADISON STREET
ILL. 60602
TELEPHONE
(312) 372-6660

ART CHALKER

handled. My pair of Imperials had a nail work through, causing me to rip the sole of my left Supp Hose sock; hence, a pair of 4^{25} socks ruined. Mr. Bakowski replaced the socks, and had my shoes fixed, at no cost.

With service like this, and Mr. Bakowski's attitude, Florsheim Shoes has to be a very successful company. I was very impressed!

Ralph Nader will be out of business if he ever starts on

838(a)

ART CHALKER

Florsheim!

Thank you for selling well-made, nice-looking shoes, and more importantly, standing behind them!

I don't know how, or what you pay, MR. BAROWSKI, but I humbly submit, he is worth all, or more.

Sincerely,

Art Chalker
1147 Tamarack Lane
Pittsburgh, Pa. 15237

General Counsel's Exhibit 16

RETAIL CLERKS INTERNATIONAL ASSOCIATION
MEMBERSHIP APPLICATION

PRINT OR TYPE

G C 16

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME Scott	FIRST NAME Louis	INITIAL Jr.	SEX M	DATE OF BIRTH 7/23/53	SOCIAL SECURITY NO. 206-44-0308

ADDRESS 201 Center St. Apt. #2	CITY	STATE	ZIP CODE

HOME PHONE

MARRIED ☐ SINGLE ☒

REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☐ YES ☒ NO

DATE OF HIRE 7/30/71

EMPLOYER'S NAME Florsheim Shoe Shop

BUSINESS ADDRESS 501 Smithfield St.

☒ FULL TIME ☐ PART TIME

TYPE WORK PERFORMED SALESMAN

PREVIOUS AFFILIATION, LOCAL NUMBER

LOCAL UNION USE ONLY

I hereby make application for membership in the RETAIL CLERKS INTERNATIONAL ASSOCIATION and affirm that the above statements are true, and I agree that all moneys paid by me shall be forfeited and my membership declared void if they are not true. I authorize the RETAIL CLERKS INTERNATIONAL ASSOCIATION to represent me for the purposes of collective bargaining and handling of grievances, either directly or through such local union as it may duly designate.

APPLICANT'S SIGNATURE x Louis Scott Jr.

DATE SIGNED 8/13/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE -/-

FOR LOCAL UNION USE ONLY

BASIS FOR MEMBERSHIP:
* CHECK ONE

- ☐ NEWLY INITIATED
- ☐ REINSTATE FROM SUSPENSION
- ☐ ADMIT (TRANSFER WITHIN 30 DAYS)
- ☐ CANCEL WITHDRAWAL
- ☐ REINSTATE FROM WITHDRAWAL
- ☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE

☐ FOOD (1) ☐ NON-FOOD (2)

⑬

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION—LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: The Florsheim Shoe Shop
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

August 13, 1975
Date

Louis Scott Jr.
Employee's Signature

⑬

recieved
in mail
8-27-75
DKB

840(a)

LABOR RELATIONS BOARD
Case No. 6-CA-2591 OFFICIAL EXHIBIT No. GC#16

Disposition
Identified ✓
Received ✓
Rejected

In the matter of Florsheim Shoe Store Co.
Date 3-3-76 Witness ______ Reporter C.T.
No. Pages /

'75 AUG 28 PM 12:25
N.L.R.B.
REGION 6 - PITTSBURGH

841(a)

General Counsel's Exhibit 17

TYPE AND [illegible] OF THESE APPS for GARY B.

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME BAll	FIRST NAME JAMES	INITIAL P	SEX M	DATE OF BIRTH 7/19/57	SOCIAL SECURITY NO. 206-46-7241
ADDRESS 1128 ROSEANNE AVE	CITY PittsBurgh	STATE P.A	ZIP CODE 15216		

HOME PHONE 531-8751

MARRIED ☐ SINGLE ☑

REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☐ YES ☑ NO

DATE OF HIRE 7/20/74

EMPLOYER'S NAME FlorSheim ShoES

BUSINESS ADDRESS 200 Fifth AVE

☐ FULL TIME ☒ PART TIME

TYPE WORK PERFORMED SALESMAN

PREVIOUS AFFILIATION, LOCAL NUMBER

LOCAL UNION USE ONLY

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
☐ NEWLY INITIATED
☐ REINSTATE FROM SUSPENSION
☐ ADMIT (TRANSFER WITHIN 30 DAYS)
☐ CANCEL WITHDRAWAL
☐ REINSTATE FROM WITHDRAWAL
☐ REINSTATE FROM MILITARY WITHDRAWAL

I hereby make application for membership in the RETAIL CLERKS INTERNATIONAL ASSOCIATION and affirm that the above statements are true, and I agree that all moneys paid by me shall be forfeited and my membership declared void if they are not true. I authorize the RETAIL CLERKS INTERNATIONAL ASSOCIATION to represent me for the purposes of collective bargaining and handling of grievances either directly or through such local union as it may duly designate.

APPLICANT'S SIGNATURE
x James P Ball

DATE SIGNED 8/13/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE / /

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION—LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: Florsheim Shoe ShoP
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8-13-75
Date

James P. Ball
Employee's Signature

842(a)

recieved in
mail
8-27-75
DKB

N.L.R.B.
REGION 6 - PITTSBURGH
'75 AUG 20 PM 12:29

LABOR RELATIONS BOARD
Docket No. 6-CA-8541 Official Exhibit No. GC #17

Disposition
Identified ✓
Received ✓
Rejected

In the matter of Florsheim Shoe Store Co.
Date 3-3-76 Witness ______ Reporter GT
No. Pages

843(a)

General Counsel's Exhibit 18

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

G C 1

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME FOREMAN	FIRST NAME Douglas	INITIAL	SEX M	DATE OF BIRTH 8/28/25	SOCIAL SECURITY NO. 178-40-1897
ADDRESS 3251 ARLINGTON AVE		CITY PITTSBURGH		STATE PA	ZIP CODE 15210
HOME PHONE 381-4567	MARRIED ☐ SINGLE ☑	REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☑ YES ☐ NO	DATE OF HIRE / /		
EMPLOYER'S NAME Florsheim Shoe Shop	BUSINESS ADDRESS 501 Smithfield St.		☐ FULL TIME ☑ PART TIME		
TYPE WORK PERFORMED SALESMEN	PREVIOUS AFFILIATION, LOCAL NUMBER		LOCAL UNION USE ONLY		

APPLICANT'S SIGNATURE
x Douglas Foreman

DATE SIGNED
8/28/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE
/

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
- ☐ NEWLY INITIATED
- ☐ REINSTATE FROM SUSPENSION
- ☐ ADMIT (TRANSFER WITHIN 30 DAYS)
- ☐ CANCEL WITHDRAWAL
- ☐ REINSTATE FROM WITHDRAWAL
- ☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☒ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION—LOCAL UNION No. 1407

CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: The Florsheim Shoe Co.
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8-28-75
Date

Douglas Foreman
Employee's Signature

recieved in mail 9-2-75 DKB

LABOR RELATIONS BOARD

Docket No. 5-CA-8591 Official Exhibit No. GC#18

Disposition
Identified ✓
Received ✓
Rejected

In the matter of [illegible] Co.

Date 3/3/76 Witness ______ Reporter G.M.

. Pages

845(a)

General Counsel's Exhibit 19

RETAIL CLERKS INTERNATIONAL ASSOCIATION
MEMBERSHIP APPLICATION

PRINT or TYPE

LOCAL 1407 CITY PGH STATE PA.

LAST NAME PARANZINO
FIRST NAME LARRY
INITIAL P
SEX M
DATE OF BIRTH 5/6/58
SOCIAL SECURITY NO. 178-54-5105

ADDRESS 2357 EDGAR ST
CITY PGH.
STATE PA
ZIP CODE 15210

HOME PHONE 882-3115
MARRIED ☐
SINGLE ☑
REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☐ YES ☑ NO
DATE OF HIRE 8/25/75

EMPLOYER'S NAME Florsheim Shoe Shop
BUSINESS ADDRESS 501 Smithfield St.
☐ FULL TIME
☑ PART TIME

TYPE WORK PERFORMED STOCK HELP
PREVIOUS AFFILIATION, LOCAL NUMBER
LOCAL UNION USE ONLY

[illegible]

APPLICANT'S SIGNATURE x Larry Paranzino
DATE SIGNED 8/28/75
LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE
AFFILIATION DATE / /

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
- ☐ NEWLY INITIATED
- ☐ REINSTATE FROM SUSPENSION
- ☐ ADMIT (TRANSFER WITHIN 30 DAYS)
- ☐ CANCEL WITHDRAWAL
- ☐ REINSTATE FROM WITHDRAWAL
- ☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

23

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: The Florsheim Shoe Co.
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

Date

Employee's Signature

23

received in mail 9-2-75 EKD

LABOR RELATIONS BOARD

Docket No. 6 CA-8591 OFFICIAL EXHIBIT NO. GC 4/19

Disposition
Identified ✓
Received ✓
Rejected

In the matter of Florsheim Shoe Store Co

Date 3/3/76 Witness ____ Reporter G. M.

No. Pages

847(a)

General Counsel's Exhibit 20

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME Schneider	FIRST NAME James	INITIAL G	SEX M	DATE OF BIRTH 10/11/53	SOCIAL SECURITY NO. 209-44-9925
ADDRESS 123 Lower Arrowhead Rd	CITY Pittsburgh	STATE Pennsylvania	ZIP CODE 15237		
HOME PHONE 311-8612	MARRIED ☑ SINGLE ☐	REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☑ YES ☐ NO	DATE OF HIRE 5/3/74		
EMPLOYER'S NAME Florsheim Shoes	BUSINESS ADDRESS 200 Fifth Ave	☒ FULL TIME ☐ PART TIME			
TYPE WORK PERFORMED Sales - Asst Manager	PREVIOUS AFFILIATION, LOCAL NUMBER	LOCAL UNION USE ONLY			

[illegible]

APPLICANT'S SIGNATURE x James G. Schneider

DATE SIGNED 8/13/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE - / -

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
☐ NEWLY INITIATED
☐ REINSTATE FROM SUSPENSION
☐ ADMIT (TRANSFER WITHIN 30 DAYS)
☐ CANCEL WITHDRAWAL
☐ REINSTATE FROM WITHDRAWAL
☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION—LOCAL UNION No. 1407

CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: Florsheim Shoe Shop
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8/13/75
Date

James G. Schneider
Employee's Signature

848(a)

received in
mail 8-27-75
DKB

LABOR RELATIONS BOARD
Case No. 6-CA-8591 Exhibit GC 20
Disposition { Identified ✓
Received ✓
Rejected
In the matter of Florsheim Shoe Store Co
Date 3/3/76 Witness Reporter DM
No. Pages

'75 AUG 28 PM 12:29
N.L.R.B.
REGION 6 - PITTSBURGH

849(a)

General Counsel's Exhibit 21

RETAIL CLERKS INTERNATIONAL ASSOCIATION
MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME McGonigle	FIRST NAME Arnold	INITIAL H	SEX M	DATE OF BIRTH 11/12/46	SOCIAL SECURITY NO. 178-36-838
ADDRESS 3015 BROWNSVILLE Rd	CITY Pgh	STATE Pa.	ZIP CODE 15227		

HOME PHONE

MARRIED ☒ SINGLE ☐

REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☑ YES ☐ NO

DATE OF HIRE 03/01/75

EMPLOYER'S NAME Florsheim Shoe Co.

BUSINESS ADDRESS 200 5th Ave

☐ FULL TIME ☑ PART TIME

TYPE WORK PERFORMED SALESMAN

PREVIOUS AFFILIATION, LOCAL NUMBER

LOCAL UNION USE ONLY

FOR LOCAL UNION USE ONLY

BASIS FOR MEMBERSHIP:

CHECK ONE

- ☐ NEWLY INITIATED
- ☐ REINSTATE FROM SUSPENSION
- ☐ ADMIT (TRANSFER WITHIN 30 DAYS)
- ☐ CANCEL WITHDRAWAL
- ☐ REINSTATE FROM WITHDRAWAL
- ☐ REINSTATE FROM MILITARY WITHDRAWAL

[illegible]

APPLICANT'S SIGNATURE x Arnold H McGonigle

DATE SIGNED 03/25/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE / .

INDUSTRY TYPE:

CHECK ONE

☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION—LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: Florsheim Shoe Shop
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8/25/75
Date

Arnold H McGonigle
Employee's Signature

850(a)

recieved in
mail
8-27-75
DKB

N.L.R.B.
REGION 6 - PITTSBURGH
'75 AUG 28 PM 12:29

LABOR RELATIONS BOARD
Docket No. 6-CA-8591 CIAL EXHIBIT DC #21

Disposition
Identified ✓
Received ✓
Rejected

In the matter of Florsheim Shoe Store Co
Date 3/3/76 Witness Reporter D.M.
No. Pages

General Counsel's Exhibit 22

RETAIL CLERKS INTERNATIONAL ASSOCIATION
MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME: O'NEIL
FIRST NAME: TERRENCE
INITIAL: D.
SEX: m
DATE OF BIRTH: 02/11/51
SOCIAL SECURITY NO.: 163-44-5680
ADDRESS: 2760 OHIO St.
CITY: Bethel PARK
STATE: Pa. ~~15102~~
ZIP CODE: 15102
HOME PHONE: 833-4382
MARRIED ☐ SINGLE ☑
REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☑ YES ☐ NO
DATE OF HIRE: 05/04/73
EMPLOYER'S NAME: Florsheim SHOE SHop
BUSINESS ADDRESS: South Hills Village 111 Fort Couch RD.
☑ FULL TIME
☐ PART TIME
TYPE WORK PERFORMED: SALES Clerk
PREVIOUS AFFILIATION, LOCAL NUMBER: NONE
LOCAL UNION USE ONLY

[illegible]

APPLICANT'S SIGNATURE: x Terrence D. O'Neil
DATE SIGNED: 8/28/75
LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE:
AFFILIATION DATE: 1

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
☐ NEWLY INITIATED
☐ REINSTATE FROM SUSPENSION
☐ ADMIT (TRANSFER WITHIN 30 DAYS)
☐ CANCEL WITHDRAWAL
☐ REINSTATE FROM WITHDRAWAL
☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: FLORSHEIM SHOE COMPANY
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

[illegible] authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for [illegible] calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

08/28/75
Date

Terrence D. O'Neil
Employee's Signature

received in mail 9-2-75 BKB

LABOR RELATIONS BOARD

Docket No. 6-CA-8591 [illegible]IAL EXHIBIT GC #22

Disposition { Identified ✓ Received ✓ Rejected

In the matter of Florsheim Shoe Store Co.

Date 3/3/76 Witness ______ Reporter G.M.

. Pages

General Counsel's Exhibit 23

RETAIL CLERKS INTERNATIONAL ASSOCIATION
MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME Halliday	FIRST NAME Andrew	INITIAL J	SEX M	DATE OF BIRTH 2/18/57	SOCIAL SECURITY NO. [illegible]
ADDRESS RD #1	CITY [illegible]	STATE PA	ZIP CODE [illegible]		
HOME PHONE [illegible]	MARRIED ☑ SINGLE ☐	REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☑ YES ☐ NO	DATE OF HIRE 12/26/74		
EMPLOYER'S NAME Florsheim Shoe Co	BUSINESS ADDRESS [illegible] Mall	☐ FULL TIME ☑ PART TIME			
TYPE WORK PERFORMED Salesman	PREVIOUS AFFILIATION, LOCAL NUMBER	LOCAL UNION USE ONLY			

[illegible]

APPLICANT'S SIGNATURE x. [illegible]

DATE SIGNED 8/27/75 (MO. DAY YR.)

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE / (MO. YR.)

FOR LOCAL UNION USE ONLY

BASIS FOR MEMBERSHIP:
* CHECK ONE

- ☐ NEWLY INITIATED
- ☐ REINSTATE FROM SUSPENSION
- ☐ ADMIT (TRANSFER WITHIN 30 DAYS)
- ☐ CANCEL WITHDRAWAL
- ☐ REINSTATE FROM WITHDRAWAL
- ☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE

☐ FOOD (1) ☐ NON-FOOD (2)

43

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION—LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: Florsheim Shoe Company
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8/27/75
Date

Andrew J Halliday
Employee's Signature

44

recieved from Joe in store 8-28-75

DKB

LABOR RELATIONS BOARD

Docket No. 6-CA-8596 Exhibit No. GC #23

Disposition
Identified ✓
Received
Rejected

In the Matter of Florsheim Shoe Store Co.

Date 3/3/76 Witness ______ Reporter G.M.

General Counsel's Exhibit 24

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME: MESSENGER
FIRST NAME: WILLIAM
INITIAL: G
SEX: M
DATE OF BIRTH: 9/26/51
SOCIAL SECURITY NO.: 200-42-753

ADDRESS: 8301 ST. LAWRENCE AVE
CITY: PGH.
STATE: PA.
ZIP CODE: 15218

HOME PHONE: 243-2115
MARRIED ☒ SINGLE ☐
REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☐ YES ☒ NO
DATE OF HIRE: 8/29/74

EMPLOYER'S NAME: Florsheim Shoe Co.
BUSINESS ADDRESS: Northway Mall
☐ FULL TIME ☒ PART TIME

TYPE WORK PERFORMED: Salesman
PREVIOUS AFFILIATION, LOCAL NUMBER: 0
LOCAL UNION USE ONLY

APPLICANT'S SIGNATURE: x William Messenger
DATE SIGNED: 8/23/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE
AFFILIATION DATE: - / -

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
☐ NEWLY INITIATED
☐ REINSTATE FROM SUSPENSION
☐ ADMIT (TRANSFER WITHIN 30 DAYS)
☐ CANCEL WITHDRAWAL
☐ REINSTATE FROM WITHDRAWAL
☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407

CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: Florsheim Shoe Company
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8/2-/75
Date

William Messenger
Employee's Signature

---

recieved from Joe Osselburn in store
5-25-75 JKB.

LABOR RELATIONS BOARD
Docket No. 6-CA-8591 Exhibit GC 24

Disposition
Identified ✓
Received ✓
Rejected

In the matter of Florsheim Shoe Store Co
Date 3/3/76 Witness ______ Reporter G.M.
No. Pages

General Counsel's Exhibit 25

RETAIL CLERKS INTERNATIONAL ASSOCIATION
MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME CORRIGAN.	FIRST NAME ROBERT	INITIAL L	SEX M	DATE OF BIRTH 05/27/55	SOCIAL SECURITY NO. 199-46-1977
ADDRESS 309 Coachman Road	CITY Allison Pk	STATE PA			ZIP CODE 15101

HOME PHONE 486-8707

MARRIED ☐ SINGLE ☒

REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☒ YES ☐ NO

DATE OF HIRE 01/15/75

EMPLOYER'S NAME Florsheim Shoe Com.

BUSINESS ADDRESS 2124 Northway Mall

☐ FULL TIME ☒ PART TIME

TYPE WORK PERFORMED Salesman

PREVIOUS AFFILIATION, LOCAL NUMBER

LOCAL UNION USE ONLY

I hereby make application for membership in the RETAIL CLERKS INTERNATIONAL ASSOCIATION and affirm that the above statements are true, and I agree that all moneys paid by me shall be forfeited and my membership declared void if they are not true. I authorize the RETAIL CLERKS INTERNATIONAL ASSOCIATION to represent me for the purposes of collective bargaining and handling of grievances, either directly or through such local union as it may designate.

APPLICANT'S SIGNATURE x Robert Lee Corrigan

DATE SIGNED 8/27/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE / 1 /

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
☐ NEWLY INITIATED
☐ REINSTATE FROM SUSPENSION
☐ ADMIT (TRANSFER WITHIN 30 DAYS)
☐ CANCEL WITHDRAWAL
☐ REINSTATE FROM WITHDRAWAL
☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: Florsheim Shoe Company
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8-27-75
Date

Robert Lee Corrigan
Employee's Signature

recieved from Joe in store (8-28-75
GKB

LABOR RELATIONS BOARD
Docket No. 6-CA-8591 Official Exhibit No. GC #25
Disposition { Identified ✓ / Received ✓ / Rejected
In the matter of Florsheim Shoe Store Co.
Date 3/3/76 Witness ________ Reporter G M.
No. Pages

General Counsel's Exhibit 26

The Florsheim Shoe Shops **Internal Correspondence**

on	TUES	WED	THUR	FRI	SAT
	10-9:30		11-9:30	1:30 9:30	10-9:30
9:30	11½	5-9:30	10½	7	

23
7
30
11½
41½

41½
9
50½

Corrigan's schedule

1/9

General Counsel's Exhibit 27

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

Former D.E. #7
G.C.-27

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME KORITSKY	FIRST NAME GREGORY	INITIAL J	SEX M	DATE OF BIRTH 4/22/55	SOCIAL SECURITY NO. 186-46-6784
ADDRESS 502 CORTLAND DRIVE EAST		CITY McKees Rocks	STATE PA		ZIP CODE 15136

HOME PHONE 771-1257
MARRIED ☐
SINGLE ☑
REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☑ YES ☐ NO
DATE OF HIRE 11/15/74
EMPLOYER'S NAME FLORSHEIM SHOE SHOP
BUSINESS ADDRESS NORTHWAY MALL
☑ FULL TIME
☐ PART TIME
TYPE WORK PERFORMED ASSISTANT MGR/SALESMAN
PREVIOUS AFFILIATION, LOCAL NUMBER 1407
LOCAL UNION USE ONLY

[illegible]

APPLICANT'S SIGNATURE x
DATE SIGNED 8/27/75
LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE
AFFILIATION DATE /

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
☐ NEWLY INITIATED
☐ REINSTATE FROM SUSPENSION
☐ ADMIT (TRANSFER WITHIN 30 DAYS)
☐ CANCEL WITHDRAWAL
☐ REINSTATE FROM WITHDRAWAL
☐ REINSTATE FROM MILITARY WITHDRAWAL

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: FLORSHEIM SHOE COMPANY
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8/27/75
Date

Employee's Signature

recieved from Joe in d re 8-28-75
DRB

LABOR RELATIONS BOARD
Docket 6CA 8591 OFFICIAL EXHIBIT NO. GC-27
Disposition { Identified ✓ / Received ✓ / Rejected
In the matter of Florsheim Shoe Store Co.
Date 3/3/76 Witness ______ Reporter G.M.
No. Pages

862a
General Counsel's Exhibit 28

RETAIL CLERKS INTERNATIONAL ASSOCIATION MEMBERSHIP APPLICATION

PRINT OR TYPE

Local 1407 CITY Pittsburgh STATE Pennsylvania

LAST NAME SARVER	FIRST NAME Michael	INITIAL T	SEX M	DATE OF BIRTH 4/30/56	SOCIAL SECURITY NO. 180-43-5341

ADDRESS 933 Bradwin Ave	CITY E McKeesport	STATE PA	ZIP CODE 15035

HOME PHONE

MARRIED ☐ SINGLE ☒

REGISTERED VOTER IN STATE AND COUNTY OF RESIDENCE? ☒ YES ☐ NO

DATE OF HIRE 6/1/75

EMPLOYER'S NAME Florsheim Shoe Sh

BUSINESS ADDRESS Monroeville Mall

☐ FULL TIME ☒ PART TIME

TYPE WORK PERFORMED Salesman

PREVIOUS AFFILIATION, LOCAL NUMBER None

LOCAL UNION USE ONLY

FOR LOCAL UNION USE ONLY
BASIS FOR MEMBERSHIP:
* CHECK ONE
☐ NEWLY INITIATED
☐ REINSTATE FROM SUSPENSION
☐ ADMIT (TRANSFER WITHIN 30 DAYS)
☐ CANCEL WITHDRAWAL
☐ REINSTATE FROM WITHDRAWAL
☐ REINSTATE FROM MILITARY WITHDRAWAL

[illegible]

APPLICANT'S SIGNATURE x Michael T. Sarver

DATE SIGNED 6/6/75

LOCAL UNION EXECUTIVE OFFICER'S SIGNATURE

AFFILIATION DATE /

INDUSTRY TYPE:
* CHECK ONE
☐ FOOD (1) ☐ NON-FOOD (2)

FORWARD THIS COPY TO THE INTERNATIONAL SECRETARY-TREASURER

RETAIL CLERKS INTERNATIONAL ASSOCIATION — LOCAL UNION No. 1407
CHECK-OFF ASSIGNMENT AND AUTHORIZATION CARD

To: THE FLORSHEIM SHOE SHOP
Name of Firm

I hereby assign to Retail Store Employees Union, Local 1407, and authorize the Employer to deduct from any salary or wages earned or to be earned by me as an employee an amount equal to all my Union dues and initiation fees as certified by the President of the Union.

I further authorize and request the Employer to remit the amount deducted to the President not later than the 15th day of the month and for each calendar month following the date of this assignment.

This assignment and authorization shall remain in effect until revoked by me, but shall be irrevocable for a period of one year from the date appearing below or until the termination of the Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. This authorization shall continue automatically and irrevocably for successive periods of one year each, or for the period of each succeeding applicable Collective Bargaining Agreement between the employer and the Union, whichever period shall be shorter, unless written notice of its revocation is given by me to the Employer and to the Union by registered mail not more than thirty (30) days and not less than fifteen (15) days prior to the expiration of each period of one year, or of each applicable Collective Bargaining Agreement between the Employer and the Union, whichever occurs sooner. Such notice of revocation shall become effective the calendar month following the calendar month in which the Employer receives it.

This assignment and authorization supersedes all previous assignments and authorizations heretofore given by me in relation to my Union dues.

8/8/75
Date

Michael T. Sarver
Employee's Signature

N.L.R.B.
REGION 6 - PITTSBURGH

'75 AUG 28 PM 12:23

LABOR RELATIONS BOARD
6-CA-8591 EXHIBIT NO. GC 28
Identified ✓
Disposition Received ✓
Rejected
In the matter of Florsheim Shoe Store Co.
3/3/76 Witness ____ Reporter D.M.
No. Pages

received in mail 8/11/75 DKB

General Counsel's Exhibit 29

COMMONWEALTH OF PENNSYLVANIA)
) SS
COUNTY OF ALLEGHENY)

AFFIDAVIT

Now comes ~~Lewis~~ Louis G. Brien, who resides at 1214 Laurel Avenue, Deerfield, Illinois, 60015, and whose telephone number is 312/945-6547. Having been duly sworn, I depose and state the following:

1. I am employed by The Florsheim Shoe Shops in Chicago, Illinois, as Vice President and General Manager over the past six years. I oversee operations; including labor relations at the approximately 300 Florsheim retail stores throughout the country.

2. The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, is a corporation in the state of Pennsylvania. It consists of four stores, at 200 Fifth Avenue; 501 Smithfield Street; 2124 Northway Mall; and 111 Fort Couch Road, South Hills Shopping Center. It is 85% owned by Interco, Incorporated, a Delaware corporation, and 15% owned by others.

3. The Florsheim Shoe Store Company of Monroeville, Pennsylvania is a corporation in the state of Pennsylvania, and consists of several stores, are at 120 ~~Northway~~ Monroeville Mall ~~and~~ in Monroeville. It is 100% owned by Interco, Incorporated.

4. The Florsheim Shoe Shop is a division of Interco, Incorporated which ~~manages~~ owns Florsheim Shoe stores.

5. The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania and The Florsheim Shoe Store Company of Monroeville, Pennsylvania, each do an annual gross volume business of above $500,000, with an annual inflow of over $50,000 across state lines.

6. I first became aware of an overly high percentage of part-time salesmen on the payrolls of our Pittsburgh area stores in early 1975, while reviewing the productivity of these stores.

7. I prefer to use full-time salesmen in our stores. I find part-time salesmen are not as professional, and are less productive in terms of sales. They don't have the committment to the job as they don't regard it as a career. They don't take the time to keep up on new stock and developments on the job. Also, we have problems with inappropriate dress with these people. Also, in our shopping center stores with their extended hours, we find part-time salesmen

usually work on evenings and Saturdays. These are our best potential sales times. Combining our most productive sales periods with our least professional sales staff brings our sales down below their top potential.

8. During January, February, and March, 1975, I discussed these problems periodically with Regional Manager Silverhorn and Pittsburgh General Manager Levine. At different times I ordered that certain numbers of part-time salesmen be reduced at certain stores. For one reason or another, these orders weren't always implemented.

9. In May and June, 1975, I was preoccupied with bargaining negotiations and a strike in our New York stores. In July I had a large backlog of work and I vacationed in early August. When I returned to work in mid-August, I found a follow-up memo I had filed the previous spring to follow through on the problem of excessive part-time staff in Pittsburgh. I discovered that Pittsburgh area sales were down 2.6% from the previous year in the January to August 1975 period, while on our national figures, including both Pittsburgh and New York, where we had a three week strike, were up 7.5%. I also discovered that 2/3 of our Pittsburgh staff were part-time. This made me decide to deal with this problem immediately. Also, I realized this was a good time of year to implement changes in that there was still plenty of time to prepare for the holiday season, and our clearance season and vacation season were about to end.

10. I had Ted Silverhorn contact Mr. Levine on this. I was told that my earlier orders hadn't been executed. I asked that Levine check his applicant file and report on availability of full-time salesmen in the area. Levine emphatically stated experienced full-time people were not available and that the last application for full-time work was filed September, 1974. It is not our policy to advertise for salesmen. This transpired in the week ending August 22.

11. At this point I decided we would change over to full-time staff in Pittsburgh and would bring in men as needed from other stores near the Pittsburgh area and from our Chicago training program. Within the two weeks ending August 29, I contacted Philadelphia area manager Charlie Crump, Erie store manager Fockler, Chicago area manager THRALL ~~Thrat~~o, and New York--Northern New Jersey area manager SAPHIRE ~~Safire~~ about the availability of experienced employees for transfer to Pittsburgh.

Incidentally, all of these areas except Erie AND CHICAGO are Union. At this point the decision of how we would change to full-time staff in Pittsburgh and to what degree we would change was not yet firm and final.

12. We have stopped using part-time employees in other areas before Pittsburgh. Ten years ago we dropped all part-time staff in New York City and have used only full-time people there since. We did the same thing four or five years ago in Philadelphia, three years ago in Seattle, 2 1/2 years ago in Atlanta, two years ago in Los Angeles, and in Minneapolis last year. In most of these cases, we transferred other employees from elsewhere, often from quite distant regions. Our experience where we have made this change has been that sales have risen afterward.

13. On September 2, 1975, Mr. Levine called me and told me he had received a petition for recognition from the Retail Clerks Union. He said he was forwarding it to me. This was the first knowledge I had of union activity in our Pittsburgh stores. At that time I ~~already~~ had several people IN MIND ~~who were chosen~~ to transfer to Pittsburgh, ~~and who had accepted our transfer offer~~. I do not recall which individuals these were. I called our labor attorney, Marvin Dicker. He recommended holding off on any action on the union campaign or on the full-time staff changeover until we had more information and time for consideration. We made an appointment to go to Pittsburgh September 8.

14. On September 8, I arrived in Pittsburgh and met Mr. Dicker at the Hilton Hotel. I brought him up to date on the sales status of the Pittsburgh stores and on the full-time staffing project. I told him I knew nothing about the union situation and Levine had told me he knew nothing.

15. That day Dicker, Silverhorn, and I met with each store manager individually. Dicker instructed the managers to keep their eyes and ears open about what was going on. He told them to ask the employees what was bothering them and to advise us of what was discovered. He specified that they should not threaten or coerce the employees or promise them any benefits. At these meetings the changeover to full-time staff was not mentioned. TO THE STORE MANAGER

16. On September 9, I visited the five stores with Levine and Silverhorn. Afterward I returned to Chicago.

17. At this point, I made the final decision to put full-time staff into the Pittsburgh stores. I decided the part-time employees would be offered the opportunity for full-time work. After that I could make up figures on how many replacements would be needed and whether any part-time staff would be needed afterward. Up to this point I had only discussed this with Mr. Silverhorn and Mr. Levine.

18. On September 10 or 11, I delegated this project to Mr. Paul Holmes, my Administrative Assistant. I directed him to survey the stores regarding this problem, to talk to the managers and employees, to arrange for any replacements needed, and to effect any transfers within the five stores as might be needed for most efficient operation.

19. Full-time replacement salesmen began arriving in Pittsburgh during the middle to the end of the week of September 18. In all, we brought in seven people from out of town. We paid their transportation, moving costs, and lodging for an initial period of one to two weeks. This has been standard procedure for employee transfers and was done in other citiesswhere we eliminated part-time employees and brought in replacements from out of town.

20. Our weekly sales figures in Pittsburgh immediately before and after the change were as follows:

Week ending September 4	-	up 0.3%
Week ending September 11	-	down 0.3%
Week ending September 18	-	up 13%
Week ending September 25	-	up 20%
Week ending October 2	-	up 7%

These are in comparison to the same weeks in the previous year.

I have read the above statement consisting of four typewritten pages and believe it to be true and correct to the best of my knowledge and belief.

Louis D. Brin

Subscribed and sworn to before me
this 22nd day of October 1975
at Chicago, Illinois.

My Commission Expires January 23, 1977

General Counsel's Exhibit 30

Pittsburgh #48306

RS 106 W cc: Mr. L. G. Brien

The Florsheim Shoe Shops **Internal Correspondence**

February 14, 1975

Mr. H. B. Levine:

As per our conversation, Wednesday, February 12, effective week ending February 13, 1975, you will eliminate one part-time man from South Hills Village, and Northway Mall.

Also I will need from the managers of the above stores the following:

1. Name of person terminated;
2. Date terminated;
3. First full week not appearing on payroll.

I again want to caution you on the part time use of Mr. Battaglia in regards to his retirement benefits.

Best Regards,

T. L. Silberhorn

T. L. Silberhorn

General Counsel's Exhibit 31

COMMONWEALTH OF PENNSYLVANIA)
) ss
COUNTY OF ALLEGHENY)

AFFIDAVIT

Now comes Howard B. Levine, residing at 5401 Forbes Avenue, Pittsburgh, Pennsylvania, and whose telephone number is 421-7024. Having been duly sworn, I depose and state the following:

1. I have been the District Manager for the Pittsburgh area Florsheim Shoe stores for the past 14 years.

2. I first heard about the union on Friday, August 29 when I received their petition by mail. I forwarded it to Mr. Brien in the mail along with a note that I would telephone him on the following Tuesday. When I talked to Brien on the telephone, he said don't take any action concerning the union and to report anything I heard to him. I did not hear anything more about the union that week.

2. On September 8 Brien was in town with Mr. Dicker and Mr. Silverhorn. I met with them that day. I was instructed to keep my eyes and ears open. We also discussed using full-time salesmen in the Pittsburgh stores.

3. After that meeting none of the managers reported any discoveries about union activity to me.

4. Last winter or early this year, Ted Silverhorn told me that Mr. Brien wanted full-time salesmen in my stores. This came up occasionally during Silverhorn's frequent telephone calls to me and during at least two visits he made to Pittsburgh. I also received orders to lower the number of part-time employees in certain stores but I begged off on this as I was short of salesmen. I didn't ask for transfers or trainees at this time, however.

5. I returned from vacation on August 25, 1975. During that week I received a telephone call from Silverhorn that all salesmen in my stores would have to be full-time. He said he would handle the changeover. This was before I received the letter from the union requesting recognition.

6. I never advertised for salesmen to replace the part-time salesmen. It is my policy not to advertise for salesmen. We did have a shortage of applicants for full-time sales jobs.

7. Mr. Brower, the Smithfield Street store manager, had talked to me about salesman Ron Bakowski several times in the past nine months. I spoke to Bakowski myself about the problems he was causing at least twice in this period. The week Bakowski was discharged, Brower discussed it with me in advance. I told him to do what he wanted as long as he had a replacement. Brower said he thought he had someone who could replace Bakowski. On Thursday, August 28, Brower telephoned me and said he had decided to discharge Bakowski. I told him I would prefer that he talk to Bakowski personally on the telephone if posssible. Brower called back later and said he couldn't reach Bakowski, so he was going to write him a letter terminating him. I wasn't in Brower's store at all that day. The day before, Wednesday, August 27, I saw Bakowski in my store at 200 Fifth Avenue. I said nothing to him except "Enjoy your vacation." Bakowski was fired one or two days before I learned about the union.

8. No store managers ever reported anything about union activity to me. Bruce Brower never said anything to me about Louis Scott's union activities.

I have read the above statement consisting of two typewritten pages and believe it to be true and correct to the best of my knowledge and belief.

Howard B. [illegible]

Subscribed and sworn to before me

this 29th day of October 1975

at Pittsburgh, Pennsylvania 15222.

[illegible] Notary Public
[illegible], Pa
[illegible] 15, 1976

Respondent's Exhibit 5

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

THE FLORSHEIM SHOE STORE COMPANY OF PITTSBURGH, PENNSYLVANIA and THE FLORSHEIM SHOE STORE COMPANY OF MONROEVILLE, PENNSYLVANIA,

Plaintiffs,

-against-

THE NATIONAL LABOR RELATIONS BOARD; JOHN S. IRVING, in his official capacity as General Counsel to the National Labor Relations Board; ROBERT E. ALLEN, in his official capacity as Director, Office of Appeals, Office of General Counsel, National Labor Relations Board; and HENRY SHORE, in his official capacity as Regional Director, National Labor Relations Board, Region 6,

Defendants.

ORDER TO SHOW CAUSE

Upon the summons and verified complaint and the affidavits of Marvin Dicker, Esq., and Jonathan L. Sulds, Esq., both sworn to the 24th day of February, 1976, it is

ORDERED, pursuant to Rule 65 of the Federal Rules of Civil Procedure, that the defendants show cause in Room , United States Courthouse, Pittsburgh, Pennsylvania, at .M. on March , 1976 or as soon thereafter as counsel can be heard why an order should not be made enjoining defendants, their officers, agents, servants, employees and attorneys and all persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise during the pendency of this action, from

1) Withholding from, and refusing to make available for inspection and copying to, plaintiffs herein, all records sought by plaintiffs in their Freedom of Information Act Request, Exhibit E, to the Verified Complaint; and

2) Conducting any administrative hearing, in Case No. 6-CA-8591 until a reasonable time after defendants have made available to plaintiffs for inspection and copying the records requested in plaintiffs' Freedom of Information Act Request.

Dated: Pittsburgh, Pennsylvania
, 1976

U.S.D.J.

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF PENNSYLVANIA

- x

THE FLORSHEIM SHOE STORE COMPANY OF PITTSBURGH, PENNSYLVANIA, AND THE FLORSHEIM SHOE STORE COMPANY OF MONROEVILLE, PENNSYLVANIA, :

Plaintiffs, :

-against- :

VERIFIED COMPLAINT

NATIONAL LABOR RELATIONS BOARD, JOHN S. IRVING, in his official capacity as General Counsel of the National Labor Relations Board, ROBERT E. ALLEN, in his official capacity as Director, Office of Appeals, Office of the General Counsel, National Labor Relations Board and HENRY SHORE, in his official capacity as Regional Director of the National Labor Relations Board, Region 6, :

Defendants. :

- x

Plaintiffs, The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania (Florsheim-Pittsburgh) and The Florsheim Shoe Store Company of Monroeville, Pennsylvania (Florsheim-Monroeville) ("plaintiffs"), by their attorneys Proskauer Rose Goetz & Mendelsohn, and Reed Smith Shaw & McClay, allege for their complaint:

Jurisdiction and Venue

1. (a) This action is brought to enforce the rights of the plaintiffs, and obtain related relief, under the Freedom of Information Act ("FOIA" or the "Act"), 5 U.S.C. §552 and the Due Process Clause of the Fifth Amendment to the United States Constitution.

(b) This Court has jurisdiction pursuant to the FOIA 5 U.S.C. §552(a)(4)(B), the Administrative Procedure Act, 5 U.S.C. §701 et seq., the All Writs Statute, 28 U.S.C. §1651, and 28 U.S.C. §§1331 and 1361.

(c) The matter in controversy, for purposes of 28 U.S.C. §1331, is the impairment of plaintiffs' rights under the Due Process Clause of the Fifth Amendment to the United States Constitution, which exceeds the value of $10,000.

(d) Venue is proper under §552(a)(4)(B), and 28 U.S.C. §1391(e).

The Parties

2. (a) The plaintiffs are two corporations incorporated under the laws of the State of Pennsylvania. Florsheim-Pittsburgh's principal place of business is located at 200 Fifth Avenue, Pittsburgh, Pennsylvania. Florsheim-Monroeville's principal place of business is at the Monroeville Mall, Monroeville, Pennsylvania. Both plaintiffs are engaged in the retail sale of shoes, footwear and accessories.

(b) Both plaintiff corporations are subsidiaries of the Florsheim Shoe Shop Company, Chicago, Illinois a division of Interco. Florsheim Shoe Shop is not a party to this action.

3. Defendant NATIONAL LABOR RELATIONS BOARD (the "Board") is an administrative agency of the United States Government created pursuant to the National Labor Relations Act, 29 U.S.C. §§151, et seq., with its principal offices

located at 1717 Pennsylvania Avenue, N.W., Washington, D.C.

4. Defendant HENRY SHORE is and has been at all times material hereto Regional Director of the National Labor Relations Board, Region 6, which has its principal offices in Pittsburgh, Pennsylvania. He is responsible for determining whether information requested from Region 6 is exempt from disclosure under the Act.

5. Defendant JOHN S. IRVING is and has been at all times material hereto General Counsel of the National Labor Relations Board. He is responsible for the policies of the Board with regard to disclosure of records under the Act.

6. Defendant ROBERT E. ALLEN is and has been at all times material hereto Director, Office of Appeals, Office of the General Counsel, National Labor Relations Board. He is responsible, at the direction of and pursuant to the policies of the Board's General Counsel, for determining appeals on whether the Board's Regional Directors have correctly determined that information is exempt from disclosure under the Act.

7. All defendants and their agents are "agencies" within the meaning of 5 U.S.C. §552(e).

Events Leading to the Issuance of an NLRB Complaint and Notice of Hearing

8. On or about August 29, 1975, plaintiffs received a communication from Retail Store Employees Union Local 1407, Retail Clerks International Association (the

"Union"), in which the Union demanded recognition for a collective bargaining unit consisting of plaintiffs' shoe salesmen.

9. On or about August 29, 1975, plaintiffs received notification from the National Labor Relations Board, Region 6, that a petition for the Certification of the Union had been filed and that a hearing thereon would be held on September 17, 1975. This notification is annexed hereto as Exhibit A.

10. (a) On information and belief, on September 8, 1975, the Union filed with the National Labor Relations Board an unfair labor practice charge alleging that Florsheim-Pittsburgh had violated §§8(a)(1), (3) and (5) of the National Labor Relations Act. ("NLRA").

(b) On information and belief, on September 19, 1975, the Union filed a First Amended Charge, against Florsheim-Pittsburgh, alleging violations of §§8(a)(1), (3) and (5) of the NLRA.

(c) On information and belief, on October 29, 1975, the Union filed a Second Amended Charge, alleging that Florsheim-Pittsburgh had violated §§8(a)(1), (3) and (5) of the NLRA.

(d) On information and belief, on November 18, 1975, the Union filed a Third Amended Charge alleging that Florsheim-Pittsburgh and Florsheim-Monroeville had violated §§8(a)(1), (3) and (5) of the NLRA. Copies of all charges are annexed hereto as Exhibit B.

11. Upon information and belief, agents and employees of the National Labor Relations Board conducted an investigation of the above charges from on or about September 9, 1975, through on or about November 25, 1975, in the course of which they interviewed and took written statements from representatives or employees of the Union and of plaintiffs.

12. (a) Upon information and belief, in the course of the investigation said employees and agents engaged in threats, coercion, promises, inducements, intimidation and/or influence of other kinds to obtain information from persons reluctant to communicate with said employees and agents.

(b) Further, upon information and belief, during the course of the investigation, said employees and agents obtained information showing or tending to show that plaintiffs herein did not commit the unfair labor practices alleged in the charges.

13. On or about November 26, 1975, Defendant HENRY SHORE, acting for the Board in his official capacity, authorized the issuance of a complaint and notice of hearing against plaintiffs, alleging inter alia that plaintiffs had violated §§8(a)(1), (3) and (5) of the NLRA. A copy of the Complaint and Notice of Hearing (Case No. 6-CA-8591) is annexed hereto as Exhibit C.

14. The Complaint and Notice of Hearing set February 5, 1976, as the date for commencement of the hearing. By order dated December , 1975, the Board, on

its own motion, postponed the hearing until February 18, 1976. By order dated February 5, 1976, the Board postponed the hearing further, until March 3, 1976.

15. On December 30, 1975, plaintiffs herein duly filed their Answer denying the material allegations of the Board's Complaint and asserting affirmative defenses based inter alia on the intimidation, coercion and threats of Board agents investigating the charges. A copy of this Answer is annexed hereto as Exhibit D.

Plaintiffs' Freedom of Information Act Request

16. On December 5, 1975, plaintiffs filed a Freedom of Information Act Request with Regional Director SHORE, pursuant to 5 U.S.C. §552 and the Board's own rules and regulations. 29 C.F.R. §102.117. Plaintiffs requested that defendant SHORE make available for inspection and copying certain materials, including witness statements, factual records compiled by the Board during the investigation, authorization cards designating the Union as the collective bargaining agent for plaintiffs' employees, other factual material bearing on such designation, a list of witnesses to be called at the hearing in Case No. 6-CA-8591, material relating to the intimidation, coercion, threats, etc., during the investigation, and all records showing or tending to show plaintiffs did not commit the unfair labor practices alleged. A copy of the request is annexed hereto as Exhibit E.

17. In the same letter (Exhibit E) plaintiffs noted that the records sought were necessary to plaintiffs in preparing their Answer.

18. By letter dated December 18, 1975, defendant SHORE denied plaintiffs' FOIA Request in its entirety.*

19. Defendant SHORE's letter contains only paragraphs, on information and belief, taken verbatim from a document issued by the Board's General Counsel entitled "Guidelines for Processing Requests Under the Freedom of Information Act". This document is annexed hereto as Exhibit G. Defendant SHORE failed to specify how specific FOIA exemptions apply to particular records requested by plaintiffs.

20. Pursuant to §102.117(c)(2)(ii) of the Board's Rules and Regulations, on January 16, 1976, plaintiffs timely appealed the Regional Director's determination to the Board's General Counsel. A copy of this letter is attached hereto as Exhibit H.

21. By letter dated February 17, 1976, received by plaintiffs' counsel on February 23, 1976, defendant ROBERT E. ALLEN, acting for the Board and its General Counsel, denied plaintiffs' appeal "substantially for the reasons set forth" in defendant SHORE's letter. A copy of this letter is annexed hereto as Exhibit I.

22. Upon information and belief, defendant ALLEN delayed writing the response to plaintiffs' appeal until the last day permitted under the Freedom of Information Act, 5 U.S.C. §552(a)(6)(A)(ii). Defendant ALLEN failed to specify how specific FOIA exemptions apply to particular records requested by plaintiffs. Upon information and belief, defendant ALLEN has never reversed a Regional Director's initial determination,

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* This letter is attached hereto as Exhibit F

in a case such as this.

23. By virtue of the foregoing, plaintiffs have complied with the Board's own applicable Rules and Regulations and exhausted all their administrative remedies under the FOIA.

24. Upon information and belief, all of the information sought by plaintiffs is within the provisions of the FOIA and is required to be disclosed by defendants. None of the records sought is exempt from disclosure under the Act.

25. Defendants' failure and refusal to furnish the requested information is arbitrary and capricious, deprives plaintiffs of access to public information to which they are entitled, and is in complete disregard of the Amendments to the Freedom of Information Act which became effective February 19, 1975.

26. Defendants' failure and refusal to furnish the requested information, which shows or tends to show that plaintiffs did not commit the unfair labor practices alleged, and which information defendants do not deny exists, violates plaintiffs' rights under the Due Process Clause of the Fifth Amendment to the United States Constitution, and under the United States Supreme Court decision in Brady v. Maryland, 373 U.S. 83 (1963).

27. Defendants' failure and refusal to furnish the requested information concerning the use by agents or employees of the Board of threats, coercion, inducements, promises or influences of any kind during the investigation of the unfair

labor practice charges referred to herein violates plaintiffs' rights under the Due Process Clause of the Fifth Amendment to the United States Constitution.

The Necessity For Injunctive Relief

28. All of the information requested by plaintiffs is crucial to their preparation of a defense in the unfair labor practice case.

29. If plaintiffs do not receive the requested information a reasonable time prior to the hearing in the unfair labor practice case scheduled for March 3, 1976, they will by unable to prepare their defenses and will therefore be denied a fair hearing and the opportunity to defend themselves. Plaintiffs will thereby suffer irreparable injury for which no adequate remedy at law exists.

WHEREFORE, plaintiffs pray that:

1. This Court enjoin the defendants, their agents, servants and employees from withholding the records requested by plaintiffs and that these records be produced to plaintiffs for inspection and copying.

2. This Court preliminarily enjoin defendants and their agents from conducting an administrative hearing in Case No. 6-CA-8591, now scheduled for March 3, 1976, until the final resolution of the allegations herein.

3. This Court permanently enjoin defendants and their agents from conducting its administrative hearing in Case No. 6-CA-8591 until a reasonable time after defendants

provide the requested records to plaintiffs.

4. This Court award plaintiffs reasonable attorneys' fees and litigation costs, reasonably incurred in this action, as authorized by 5 U.S.C. §552(a)(4)(E).

5. This Court order, pursuant to 5 U.S.C. §552 (a)(4)(D), that this case be assigned for argument at the earliest practicable date and be expedited in every way.

6. This Court order such other and further relief as to it shall seem just and proper.

Dated: Pittsburgh, Pennsylvania
February , 1976

REED SMITH SHAW & McCLAY

By________________________
(A Member of the Firm)
747 Union Trust Building
Pittsburgh, Pennsylvania
(412) 288-3131

PROSKAUER ROSE GOETZ & MENDELSOHN
300 Park Avenue
New York, New York 10022
(212) 593-9000

ATTORNEYS FOR PLAINTIFFS

STATE OF NEW YORK)
: ss.:
COUNTY OF NEW YORK)

AFFIDAVIT
OF
VERIFICATION

LOUIS G. BRIEN, being duly sworn deposes and says that he is General Manager, The Florsheim Shoe Shops Company, Chicago, Illinois of which plaintiffs The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania and The Florsheim Shoe Store Company of Monroeville, Pennsylvania, are subsidiaries, that he is authorized to make this affidavit on their behalf, that he has read the foregoing complaint and that the facts set forth in the foregoing complaint are true, except as to those matters which are stated upon information and belief and as to those matters he believes them to be true and that the source of his information and belief is the books and records of plaintiffs and discussions with employees, representatives and lawyers for plaintiffs.

Louis G. Brien
LOUIS G. BRIEN

Sworn to before me this
24th day of February, 1976.

Jeffrey S. Gunin
Notary Public

NATIONAL LABOR RELATIONS BOARD
REGION 6
1536 Federal Building, 1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222
Telephone (412) 644-2977

6-4

Exhibit A

August 29, 1975

Re: Florsheim Shoe Corporation
Case No. 6-RC-7236

Florsheim Shoe Corporation
200 5th Avenue
Pittsburgh, Pa. 15219

Gentlemen:

A petition for Certification of Representatives, pursuant to the provisions of the National Labor Relations Act, has been filed with this office. A copy is attached. Also enclosed is Form NLRB-4812.

Attention is called to your right, and the right of any party, to be represented by counsel or other representative in any proceeding before the National Labor Relations Board. In the event you choose to have a representative appear on your behalf, please have your representative complete "Notice of Appearance" Form NLRB-4701 and Form NLRB-4813, if desired, and forward promptly to this office.

Please submit as soon as possible to this office the following information:

(a) The attached commerce questionnaire filled out in the appropriate sections, if you have not recently submitted such information in a prior case. An extra copy is enclosed for your files.

(b) Copies of correspondence and existing or recently-expired collective bargaining contracts, if any, covering any of the employees in the unit alleged in the petition. (Names of any other labor organization claiming to represent any of the employees in the proposed unit.)

(c) An alphabetized list of employees described in the petition, together with their job classifications for the payroll period immediately preceding the date of this letter.

(d) Your position as to the appropriateness of the unit.

Exhibit A

In the event an election is agreed to or directed in this case, a list of names and addresses of all the eligible voters must be filed by the employer with the undersigned, who will in turn make it available to all parties to the case[illegible] list must be furnished to the undersigned within seven (7) d[illegible]he direction of or approval of agreement to election. I am a[illegible] you now of this procedure so that you will have ample time to prep[illegible]or the eventuality that such a list may become necessary. (This list is in addition to the list of employees requested in the proposed unit by job classification in Item (c) above.)

It has been our experience that by the time a petition such as this one has been filed, employees may have questions about what is going on and what may happen. At this point in the handling of this case, we of course do not know what disposition will be made of the petition, but experience tells us that an explanation of rights, responsibilities, and Board procedures can be helpful to your employees.

The Board believes that employees should have readily available information about their rights and the proper conduct of employee representation election. At the same time employers and unions should be apprised of their responsibilities to refrain from conduct which could impede employees' freedom of choice. Accordingly, you are requested to post the enclosed Notice to Employees in conspicuous places in areas where employees such as those described in the enclosed petition work, and to advise me whether they have been posted. Copies of this Notice are being made available to the labor organization(s) involved. In the event an election is not conducted pursuant to this petition, you are requested to remove the posted Notice.

Investigation of this matter has been assigned to the staff member named below. If you have any questions, do not hesitate to communicate with him.

Your cooperation in this matter will be appreciated.

Very truly yours,

Henry Shore

Henry Shore
Regional Director

cc:
Retail Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO
Mr. Gary Best, Organizer
951 Penn Avenue
Pittsburgh, Pa. 15222

Mr. William J. Dryer,
Director of Organization - Central Div.
Retail Clerks International Association, AFL-CIO
1101 Enquirer Building
617 Vine Street
Cincinnati, Ohio 45202

Case assigned to:
Mr. Michael C. Joyce

Agent's Telephone Number:
644-2956

Stanford A. Segal, Esquire
Gatz, Cohen, Segal & Koerner
1708 Law & Finance Building
Pittsburgh, Pa. 15219

Exhibit A

In the event an election is agreed to or directed in this case, a list of names and addresses of all the eligible voters must be filed by the employer with the undersigned, who will in turn make it available to all parties to the case. The list must be furnished to the undersigned within seven (7) days of the direction of or approval of agreement to election. I am advising you now of this procedure so that you will have ample time to prepare for the eventuality that such a list may become necessary. (This list is in addition to the list of employees requested in the proposed unit by job classification in Item (c) above.)

It has been our experience that by the time a petition such as this one has been filed, employees may have questions about what is going on and what may happen. At this point in the handling of this case, we of course do not know what disposition will be made of the petition, but experience tells us that an explanation of rights, responsibilities, and Board procedures can be helpful to your employees.

The Board believes that employees should have readily available information about their rights and the proper conduct of employee representation election. At the same time employers and unions should be apprised of their responsibilities to refrain from conduct which could impede employees' freedom of choice. Accordingly, you are requested to post the enclosed Notice to Employees in conspicuous places in areas where employees such as those described in the enclosed petition work, and to advise me whether they have been posted. Copies of this Notice are being made available to the labor organization(s) involved. In the event an election is not conducted pursuant to this petition, you are requested to remove the posted Notice.

Investigation of this matter has been assigned to the staff member named below. If you have any questions, do not hesitate to communicate with him.

Your cooperation in this matter will be appreciated.

Very truly yours,

Henry Shore

Henry Shore
Regional Director

cc:
Retail Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO
Mr. Gary Best, Organizer
951 Penn Avenue
Pittsburgh, Pa. 15222

Mr. William J. Dryer, Director of Organization - Central Div.
Retail Clerks International Association, AFL-CIO
1101 Enquirer Building
617 Vine Street
Cincinnati, Ohio 45202

Case assigned to:
Mr. Michael C. Joyce

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Stanford A. Segal, Esquire
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1708 Law & Finance Building
Pittsburgh, Pa. 15219

Exhibit B to the Complaint are the charges of unfair labor practices filed in Case No. 6-CA-8591 and they are reproduced in this Appendix as General Counsel's Exhibit Nos. 1(a), 1(c), 1(e) and 1(g)

Exhibit C to the Complaint is the
Complaint in Case No. 6-CA-8591
and is reproduced in this Appendix
as General Counsel's Exhibit 1(h)

Exhibit D to the Complaint is Respondents' Answer in Case No. 6-CA-8591 and is reproduced in this Appendix as General Counsel's Exhibit 1(n)

Exhibit E

PROSKAUER ROSE GOETZ & MENDELSOHN
300 PARK AVENUE
NEW YORK, N.Y. 10022

TELEPHONE: (212) 593-9000

WRITER'S DIRECT DIAL NUMBER

593-9422

ALFRED L. ROSE
WALTER MENDELSOHN
ARNOLD [illegible]
[illegible] FRIEDMAN
CHARLES LOOKER
HOWARD LICHTENSTEIN
JAMES J. [illegible]
GEORGE M. SHAPIRO
GERALD SILBERT
WILLIAM F. HIGGINS, JR.
EDWARD SILVER
PHILIP J. HIRSCH
JACOB IMBERMAN
ROBERT DILLER
GEORGE G. GALLANTZ
ROBERT J. LEVINSOHN
ANDREW D. ROSENMAN
BERNARD [illegible]
[illegible] G. SCHAPIRO
KLAUS EPPLER
HOWARD A. SHAPIRO
MARTIN J. OPPENHEIMER
ALAN N. [illegible]
LARRY M. LAVINSKY

STEPHEN R. KAYE
STANLEY KOMAROFF
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MARVIN DICKER
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HOWARD L. GANZ
PAUL H. EPSTEIN
LAWRENCE J. ROTHENBERG

WILLIAM R. ROSE
(1875-1931)

JOSEPH M. PROSKAUER
(1930-1971)

NORMAN S. GOETZ
(1925-1972)

CABLE: ROPUT
TELEX: ITT 421170
WU 125352

December 5, 1975

Henry Shore, Esq.
Regional Director, Region 6
National Labor Relations Board
1536 Federal Building
1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222

Re: Case No. 6-CA-8591
Freedom of Information Act
Request - Request for Extension
of Time in Which to Answer

Dear Mr. Shore:

On behalf of the Florsheim Shoe Store Company of Pittsburgh, Pennsylvania and The Florsheim Shoe Store Company of Monroeville, Pennsylvania (the "Company"), I hereby request that, pursuant to 5 U.S.C. §552 and 29 CFR §102.117 you make available for inspection and copying, the following materials:

1) All written statements or affidavits, signed or unsigned, contained in the National Labor Relations Board's case files with respect to Case No. 6-CA-8591.

2) All notes, memoranda, or other memorializations of any information gathered during the course of the investigation preceding the issuance of a complaint in Case No. 6-CA-8591 and made by the Regional Director of Region 6, the General Counsel of the National Labor Relations Board or the authorized deputy, assistant or agent of either of them.

Exhibit E

3) Any condensation, summarization, compilation or digest of information gathered during the course of the investigation of the charges in Case No. 6-CA-8591 and prepared by or for the Regional Director of Region 6, the General Counsel, or their deputies, assistants or agents.

4) All authorization cards signed by the Company's employees designating Local 1407, Retail Store Employees Union as their collective bargaining representative.

5) Any material in the possession of the Regional Director of Region 6, the General Counsel, or the deputy, assistant or agent of either of them relating to the designation of Local 1407 as the collective bargaining representative of employees of the Company, other than called for in Request #4.

6) A list of the names and addresses of all witnesses which the General Counsel or his authorized deputy or assistant intends to call to testify in Case No. 6-CA-8591.

7) All notes, memoranda, correspondence, papers, reports, inter-office communciations, minutes of meetings and all other records and documentary material in the custody or control of the Regional Director of Region 6 and General Counsel, which were obtained during the course of the investigation of this matter, and which are inconsistent with or conflict with the charges alleged in the complaint, or which show or may tend to show that Respondent may not have committed the unfair labor practices alleged therein.

8) All notes, memoranda, correspondence, papers, reports, inter-office communications, minutes of meetings and all other records and documentary material in the custody or control of the Regional Director of Region 6 and General Counsel relating in any way to the General Counsel, or Regional Director of Region 6 or deputy, assistant or agent of either of them making use of

Exhibit E

> threats, coercion, promises, inducements or influence of any kind to obtain information during the investigation of the charge in Case No. 6-CA-8591, including but not limited to all material relating in any way to the use by agents of the Board of threats of legal action against persons reluctant to give statements to such agents.

In accordance with 29 CFR §102.117(c) and 29 CFR §102.117(c)(2)(iv), the Company hereby assumes financial liability for the direct costs of the search for the requested records and their duplication. Such assumption, however, is without prejudice to the rights of the Company to seek review of the reasonableness of any charges to be assessed.

Because the materials requested above are necessary to the Company in preparing an answer to the Complaint in Case No. 6-CA-8591, the Company hereby requests that, pursuant to 29 CFR §102.22, you extend the Company's time to file an answer in Case No. 6-CA-8591 until a date 10 working days after the Company receives the material called for in this Freedom of Information Act Request.

In accordance with the Freedom of Information Act, 5 U.S.C. §552, please respond to the above request within 10 working days from the receipt of this request.

Very truly yours,

Marvin Dicker

MD:JLS:vw

SPECIAL DELIVERY
RETURN RECEIPT REQUESTED

Exhibit F

40TH ANNIVERSARY
1935
1975

NATIONAL LABOR RELATIONS BOARD
REGION 6
1536 Federal Building, 1000 Liberty Avenue
Pittsburgh, Pennsylvania 15222
Telephone (412) 644-2977

December 18, 1975

Re: The Florsheim Shoe Store Company
of Pittsburgh, Pennsylvania, et al.
Case No. 6-CA-8591

Marvin Dicker, Esquire
Proskauer, Rose, Goetz &
Mendelsohn
300 Park Avenue
New York, New York 10022

Dear Mr. Dicker:

This is in response to your letter of December 5, 1975, received in this office on December 8, 1975, in which you requested various information under the Freedom of Information Act, 5 U.S.C., Section 552. For the reasons set forth below, your request must be denied.

The information you request is privileged from disclosure by Exemptions 5 and 7(A), (C) and (D) of Section 552(b) of the Freedom of Information Act, 5 U.S.C., Section 552(b)(5), (7)(A), (C) and (D).

Insofar as your request relates to "notes, memoranda, correspondence, papers, reports, inter-office communications, minutes of meetings and all other records and documentary material," and/or any other documents relied upon by the Regional Director in issuing complaint (Items 2, 3 and 7 of your request), such information is privileged from disclosure under Exemption 5 of the Freedom of Information Act, 5 U.S.C., Section 552(b)(5), since they are intra-Agency memoranda which would not be available by law to a party other than an agency in litigation with this Agency. The legislative history of Exemption 5 makes it clear that this subsection of the Freedom of Information Act was designed to protect and promote the objectives of fostering frank deliberation and consultation within the Agency in the policy-making state, and to prevent a premature disclosure of policy which could disrupt agency procedure. Thus, Exemption 5 is based upon and preserves the privilege against disclosure of intra-agency and inter-agency memoranda reflecting the deliberative and consultative process so that communications between those involved in the process might be uninhibited. The information you requested in Items 2, 3 and 7 of your request reflects the views of Board agents concerning prosecutorial policies in the processing of unfair labor

Exhibit F

practice cases. Since they discuss strengths and weaknesses of the evidence, analyze various legal theories, and suggest litigation strategies and settlement possibilities, such memoranda clearly reflect the deliberative and consultative process of the Agency which Exemption 5 protects from forced disclosure. See Environmental Protection Agency v. Mink, 410 U.S. 73; Montrose Chemical Corp. v. Train, 491 F. 2d 63 (C.A.D.C.).

The information you seek in Items 2, 3 and 7, as well as the information you seek in Items 1, 4, 5 and 6, is also privileged from disclosure under Exemptions 7(A), (C) and (D) of Section 552(b) of the Freedom of Information Act.

Exemption 7(A) exempts from disclosure investigatory records where such disclosure would interfere with law enforcement proceedings. The information you seek in Items 1 through 5 of your request is investigatory records compiled for law enforcement purposes and their disclosure would interfere with enforcement proceedings. Making this information available upon request would have the effect of restricting communications within the Agency and prematurely disclosing attorney work product and analyses. Since proper enforcement of labor laws administered by this Agency depends to a great extent upon free and frank communication within the Agency, preserving the integrity of the intra-Agency communications which you seek is a necessary aspect of the Board's enforcement responsibility. See Wellman Industries, Inc. v. N.L.R.B., 490 F. 2d 427 (C.A. 4), cert. den. 419 U.S. 834.

Moreover, in the investigation of unfair labor practice cases much information, including statements, is obtained from individuals who would be reluctant or would refuse to supply such information if it were routinely disclosable pursuant to a request under the Freedom of Information Act. In the administration of the Act, the Agency must be able to obtain in its investigations all potentially relevant information. The protection of the identity of individuals and the substance of the information they submit in the Agency's investigation is an important means of assuring the Agency's continuing ability to obtain such relevant information. Individuals giving statements and other information in the investigation are given assurances that their statements and their cooperation with the Agency will not be disclosed unless and until the individual is called as a witness in a formal proceeding, as provided for in Section 102.118(b) of the Board's Rules and Regulations. If the Agency were forced to disclose statements and other information submitted or obtained during the investigation of the case, in circumstances other than those provided by Section 102.118(b) of the Board's Rules and Regulations, it would substantially deter voluntary cooperation of witnesses, hinder obtaining information from all potential sources and, consequently, substantially interfere with present and future enforcement proceedings. Cf. N.L.R.B. v. Scrivener, 405 U.S. 117; N.L.R.B. v. Golden Age Beverage Co., 415 F. 2d 26 (C.A. 5).

Exhibit F

Also, since the information requested contains matter personal to the individual supplying it and to individuals referred to therein, it is exempt from disclosure under Exemption 7(C). This exemption protects the personal privacy of individuals submitting information and individuals named therein, and requires the balancing of their interests in privacy against the interest of a requesting party in disclosure. You have submitted no considerations which would, I find, overcome the privacy rights of individuals and, therefore, their right of privacy must prevail.

The requested information is also within Exemption 7(D) because its disclosure would reveal the identity of a confidential source, i.e., an individual who provides information under an assurance of confidentiality or in circumstances from which such assurances can reasonably be inferred. As noted above, individuals giving information to the Agency during the investigation are advised and assured that their statements will remain confidential, except as provided by Section 102.118 of the Board's Rules and Regulations. This policy of protecting confidential sources of information has been consistently followed in the administration of the Act and is well known to those persons dealing with this Agency. Accordingly, since the individuals furnishing the requested information in the instant case are confidential sources, Exemption 7(D) authorizes our refusal to identify the witnesses.

Further, deletion of names from the requested information would not preserve the interests recognized by Exemptions 7(A), (C) and (D) since disclosure of the material contained therein would, itself, constitute invasions of personal privacy, reveal confidential sources and, consequently, interfere with enforcement proceedings under the considerations set forth above. Deletion of portions sufficient to prevent an unwarranted invasion of personal privacy or prevent disclosure of a confidential source would result in a record so fragmented as to be incoherent and not responsive to your request.

Further, insofar as your request asks for the names and addresses of all witnesses General Counsel plans to use at the hearing in the above-captioned matter, such information is not producible under the Freedom of Information Act since it is not a currently existing document.

Finally, the "notes, memoranda, correspondence," etc. enumerated in Item 8 of your request do not, of course, exist. Therefore, these "documents" are not producible under the Freedom of Information Act.

Exhibit F

The undersigned is responsible for the determination that the records you have requested are privileged from disclosure under the Freedom of Information Act. You may obtain a review of that determination under the provisions of Section 102.117(c)(2)(ii) of the Board's Rules by filing an appeal with the General Counsel, National Labor Relations Board, Washington, D. C. 20570, within 20 days (excluding Saturdays, Sundays and legal holidays) from the receipt of this letter. Any appeal should contain a complete statement of the reasons upon which it is based.

Very truly yours,

Henry Shore

Henry Shore
Regional Director

CERTIFIED MAIL
RETURN RECEIPT REQUESTED

Exhibit G to the Complaint is omitted from this Appendix

Exhibit H

PROSKAUER ROSE GOETZ & MENDELSOHN
300 PARK AVENUE
NEW YORK, N.Y. 10022
TELEPHONE: (212) 593-9000
WRITER'S DIRECT DIAL NUMBER
593-9422

ALFRED L. ROSE
WALTER MENDELSOHN
ALFRED APPEL
WILBUR H. FRIEDMAN
CHARLES LOOKER
HOWARD LICHTENSTEIN
JAMES J. FULD
GEORGE M. SHAPIRO
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RONALD S. RAUCHBERG

WILLIAM R. ROSE
(1875-1931)
JOSEPH M. PROSKAUER
(1930-1971)
NORMAN S. GOETZ
(1925-1972)

CABLE: ROPUT
TELEX: ITT 421178
WU 125352

January 16, 1976

John S. Irving, Esq.
General Counsel
National Labor Relations Board
Washington, D.C. 20570

Re: Freedom of Information Act Request;
The Florsheim Shoe Store Company of
Pittsburgh, Pennsylvania, et al.
Case No. 6-CA-8591

Dear Mr. Irving:

Pursuant to §102.117(c)(2)(ii) of the Board's Rules and Regulations, Florsheim hereby appeals the decision of Regional Director Shore, of Region 6, on Florsheim's Freedom of Information Act Request.* As both the legislative history of the recent amendments to the Freedom of Information Act ("FOIA" or "Act") and the case law which has developed under the amended Act demonstrate, Florsheim is clearly entitled to the information sought by its Request.

Moreover, the Regional Director's decision raises serious questions about how the Board and its Regions propose to comply with the dictates of the Act and Supreme Court decisions interpreting it. The Regional Director's decision fails to discharge the statutory duties the Act imposes, as construed by the Supreme Court; and Florsheim is entitled, for this reason alone, to the information it seeks.

---

* For your reference, Florsheim's Request is attached hereto as Exhibit A; the Regional Director's decision is attached as Exhibit B.

Exhibit H

In the leading case, *NLRB v. Sears, Roebuck & Co.*, 421 U.S. 132 (1975), the Supreme Court forbade agencies, including the NLRB, from classifying information sought into "types" and then passing upon the disclosability of such "types" of information under the Act. The Court said:

> "The legislative history clearly indicates that Congress disapproves of these cases, relied on by the General Counsel [of the NLRB]...which relieve the Government *of the obligation to show that disclosure of a particular investigatory file* would contravene the purpose of Exemption 7. S. Conf. Rep. No. 93-1200 (1974)..." 421 U.S. at 164 (emphasis added)

Without regard to this requirement of law that each FOIA Request be treated on its own merits and that the Board is obliged to show that the particular information sought is exempt in the circumstances of each particular case, the Regional Director simply issued a decision incorporating the exact language the General Counsel's office had directed him to use in responding to *all* Freedom of Information Act Requests. *See*, *Guidelines for Processing of Requests Under the Freedom of Information Act*, 152 Daily Labor Reports (August 6, 1975). Indeed, it appears that, following former General Counsel Nash's instructions, the Regional Director simply located in the *Guidelines'* Table of Contents the type of information Florsheim's Request sought and selected the predetermined responding paragraph. *See*, *Guidelines*, *supra* at pp. 12 - 13.

It is obvious that following such a procedure is at odds with the commands of the Act and *Sears, Roebuck*. *See*, *Cessna Aircraft Co. v. NLRB*, 90 LRRM 2376 (D. Kan. 1975). Moreover, that such a procedure was followed dramatically underlines that the Regional Director has entirely failed to meet his statutorily imposed burden of demonstrating that *particular information sought* is exempt under the Act. §552(4)(B). The Act seeks to establish a general philosophy of full agency disclosure unless information is exempted under clearly delineated statutory language. *Sears, Roebuck*, *supra*, at 136. In this case, the Regional Director has sought to avoid the consequences of the Act by simply asserting that the requested documents are all subject

Exhibit H

to one exemption or another. *See*, *Cessna Aircraft*, *supra*, at 2379. Since the Regional Director simply chose pre-written paragraphs to fashion a form letter decision, on Florsheim's Request, it is clear he failed to demonstrate how the information sought in Florsheim's Request is specifically exempt. Accordingly, *Sears, Roebuck* and the Act require that you reverse the Regional Director's decision in its entirety.

But, even had the Regional Director examined Florsheim's Request on the merits, his decision could not be sustained. The information sought in Item 1 of Florsheim's Request -- statements of witnesses -- was denied on the basis of Exemptions 7(A), (C), and (D) -- *in paragraphs that almost exactly duplicate those used in other cases where the Board's position was totally rejected.* *Title Guarantee Co. v. NLRB*, 90 LRRM 2849 (S.D.N.Y. 1975). *See, also*, *NLRB v. Hardeman Garment Corporation*, 91 LRRM 2055 (W.D. Tenn. 1975); *Cessna Aircraft*, *supra*.

The Regional Director makes no mention of these cases and instead simply asserts that Exemptions 7(A), (C) and (D) prevent the disclosure of information sought by Florsheim in Item 1. The Regional Director, however, fails to carry his statutorily imposed burden of demonstrating how the *particular* information Florsheim seeks is specifically exempt. *Cessna Aircraft*, *supra*; *Title Guarantee*, *supra*.

The Regional Director advanced a host of general arguments in support of his decision, but he never demonstrated that (1) the statements sought were obtained under express assurances of confidentiality; (2) how personal privacy would be invaded if names and dates were deleted from the material sought; (3) how the disclosure of these statements would interfere with law enforcement proceedings since a complaint alleging unfair labor practices has already been issued in the case for which statements were taken; and (4) how the disclosure of these statements would interfere with the Board's ability to gather information or how it would deter voluntary cooperation of witnesses.

Exhibit H

As the case law demonstrates, Exemptions 7(A), (C) and (D) are not applicable unless the Regional Director can make the demonstrations listed above. This the Regional Director has failed to do.*

The Regional Director also argued that the disclosure of witnesses' statements might restrict communications within the Agency or prematurely disclose attorney work product and analysis. Since the statements sought in Item 1, presumably, were not the product of the Board's agents but rather the freely given and truthful statements of private citizens, the Regional Director apparently simply erred in using the Guidelines, supra, and selected the wrong paragraph here.

Apart from the Regional Director's failure to demonstrate in any meaningful way how the statements sought in Item 1 were subject to the Act's exemptions, and apart from his failure to even note the existence of the aforementioned cases, it is surprising that the Regional Director relied only on cases decided prior to the 1974 Amendments to the Act to support his reasoning. As the Supreme Court said in Sears, Roebuck, "Any decision of the Exemption 7 issue in this case would have to be under the Act, as amended..." 421 U.S. at 165.

The Regional Director denied disclosure of the purely factual information sought in Items 2 - 7 of Florsheim's Request on the grounds, inter alia, listed above. For the reasons we have cited above, and under the authority of Title Guarantee, Hardeman and Cessna, this information is all disclosable and the Regional Director's Decision is in error.

The Regional Director also denied disclosure of information sought by Items 2, 3 and 7 on the basis of Exemption 5. This argument has been rejected by the Courts. Title Guarantee, supra. Purely factual materials are not covered by Exemption 5. E.P.A. v. Mink, 410 U.S. 73 (1973). The Regional Director made no showing in his decision that the information sought is anything

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* In addition, the Regional Director claimed that the deletion of exempt material would make the "record so fragmented" as to be incoherent and not responsive to Florsheim's request. As the Act and Sears, Roebuck establish, however, this determination is for the person seeking information - not the Regional Director - to make. What the Regional Director dismisses may be quite important to Florsheim.

Exhibit H

other than purely factual. And, even were the factual material sought contained in the same documents as arguably exempt material, the Regional Director supplied no reason that this arguably exempt material might not have been excised prior to disclosure, as the Act mandates: "Any reasonably segregable portion of a record shall be provided..." §552(b).

The response to Florsheim's Item 2, 3 and 7, is highly surprising since Florsheim requested, for instance, the purely factual "all notes, memoranda or other memorializations of any information gathered during the course of the investigation..."* (Item 2).

We do not believe that Board agents write memoranda or notations of factual investigations, as sought in Item 2 and 7, or produce factual summaries, as sought in Item 3, which include deliberative and consultative, and thus policy-making references. Indeed, any suggestion that the investigation of a charge of an unfair labor practice, as here, involves the formulation of policy rather than the application of settled law to facts once found by such an investigation would raise serious questions about the propriety of the Board's internal procedures, especially in view of Florsheim's well-founded suspicions that the Board's case files in Case No. 6-CA-8591 contain information which tends to show Florsheim did not commit the unfair labor practices alleged and also contain information relating to the coercive investigative tactics practiced by Board agents in this case.

---

* We note in passing that the Regional Director rejected Florsheim's Request (Items 2, 3 and 7) for documents "relied upon the Regional Director in issuing complaint..." Florsheim's Requests 2, 3 and 7 did not ask for information relied upon in issuing the complaint, but rather sought information gathered during the investigation of the charges in Case 6-CA-8591. To the extent the Regional Director's inexact wording is the result of the cut and paste response directed by the Guidelines, supra, it is an understandable although not excusable error. To the extent the statement reflects reasoning as to the applicability of Exemption 5, it is simply irrelevant, incorrect and an inconceivable basis for invoking the Exemption.

The Regional Director's paragraph is drawn verbatim from the Guidelines' paragraph 5 - 2, which the Table of Contents clearly indicates is applicable to requests for instructions to issue a complaint. This apparent mistake indicates that the Regional Director either misunderstood Florsheim's Requests 2, 3 and 7 or the basis the former General Counsel had himself directed for invoking Exemption 5.

To the extent that Exemption 5 is claimed to protect attorney's work product, even the most cursory examination of *Hickman v. Taylor*, 329 U.S. 459 (1947), *see*, *also*, *Sears, Roebuck*, *supra*, at 148, 154-155, will show that the work product rule does not "exempt" material where, as here, witnesses are not equally available to both parties to a litigation. The Supreme Court said in *Hickman*:

> "We do not mean to say that all written materials obtained or prepared by an adversary's counsel with an eye toward litigation are necessarily free from discovery in all cases. Where relevant and non-privileged facts remain hidden in an attorney's file and where production of those facts is essential to the preparation of one's case, discovery may properly be had. Such written statements and documents might, under certain circumstances, be admissible in evidence or give clues as to the existence or location of relevant facts. Or they might be useful for purposes of impeachment or corroboration. And production might be justified where the witnesses are no longer available or can be reached only with difficulty."
>
> 329 U.S. at 511

As the Regional Director well knows, an employer may question employees who have given statements to the General Counsel only under the most limited conditions, conditions designed prior to the FOIA, in effect, to keep the contents of those statements secret. *See*, *Title Guarantee*, *supra*. Thus, *Hickman* holds the material sought in Items 2, 3 and 7, to which the Board had access and Florsheim did not, is clearly not exempt under Exemption 5.

Exhibit H

Moreover, the information sought by Florsheim's Item 7 is not exempt from disclosure, because of Brady v. Maryland, 373 U.S. 83 (1963) and its progeny. See, also, Moore v. Illinois, 408 U.S. 786 (1972). Significantly, the Regional Director does not deny that information sought by Item 7 does exist. Under the principles of due process of law which inhere in Brady, and to which the Act provides no exemption, this material must be disclosed.

Florsheim also requested, in Item 8, the disclosure of information relating generally to the use of inducements and threats by Board agents during the course of the investigation in Case No. 6-CA-8591. The Regional Director replied that the information sought did not exist and was therefor not producible. We simply do not believe this statement. On at least one occasion attorneys representing Florsheim telephoned to complain about such behavior. It is inconceivable there should be no record of this telephone call. And, such a record is clearly sought by Item 8 of Florsheim's Request.

We have responded at such length to the Regional Director's decision because we believe it is in error. Not only is the cut and paste method of response directed by the Guidelines not in accord with the requirements of the Act, but the substance of the decision is clearly not addressed to Florsheim's Request, is based on inapplicable precedent, and fails to sustain the statutory burdens the Act requires should Exemptions be claimed. For these reasons, we urge you to reverse the decision of the Regional Director, in all respects.

Very truly yours,

Marvin Dicker

MD:JLS:vw
Enclosures

cc: Henry Shore, Esq.

SPECIAL DELIVERY
RETURN RECEIPT REQUESTED

Exhibit I

NATIONAL LABOR RELATIONS BOARD
OFFICE OF THE GENERAL COUNSEL
Washington, D.C. 20570

February 17, 1976

Re: Florsheim Shoe Store Co.
of Pittsburgh, Pa., et al.
Case No. 6-CA-8591

Marvin Dicker, Esq.
Proskauer, Rose, Goetz &
Mendelsohn
300 Park Avenue
New York, New York 10022

Dear Mr. Dicker:

Your appeal from the Regional Director's refusal to furnish information requested in your letter of December 5, 1975, has been duly considered.

The appeal is denied substantially for the reasons set forth in the Regional Director's letter of December 18, 1975. Further, in respect to items 1, 2 and 3 of your request, exemption 5 of the Freedom of Information Act (hereafter, "FOIA") exempts disclosure of the documents you seek. That exemption incorporates the privileges which the Government enjoys under the relevant statutory and case law in the discovery context. Renegotiation Board v. Grumman Aircraft Corp., 421 U.S. 132, 150-154 (1975). When an investigator takes an affidavit or statement in an unfair labor practice investigation, it is done in anticipation of trial and must be viewed as attorney work product, which is not normally discoverable. Hickman v. Taylor, 329 U.S. 495, 512-513 (1947). Moreover, even if the results of the investigation do not warrant a finding that an unfair labor practice has been committed, the affidavits would still be used by the Regional Director in the administrative deliberations leading to the determination of whether or not issuance of a complaint is warranted. See Brockway v. Dept. of the Air Force, 518 F.2d 1184 (C.A. 8, 1975.)

In respect to items 4 and 5 of your request concerning documents in our file that would indicate a showing of interest by the employees toward Local 1407, Retail Store Employees Union, as their collective-bargaining representative, those documents are further privileged from disclousre by exemption 6 of the Freedom of Information Act.

Exhibit I

This exemption operates to privilege from disclosure personnel and medical files and similar files not only of Agency personnel but also the files of other persons which might be in the possession of the Agency in the course of processing a case. Moreover, exemption 6 requires the Board to balance the right of privacy of affected individuals against the right of the public to be informed. Cf. Getman v. N.L.R.B., 450 F. 2d 670 (C.A.D.C.). Since you have submitted no showing of public interest which would, I find, overcome the privacy right of individuals, their right of privacy must prevail.

In respect to item 6 of your request, a preliminary list of the witnesses the General Counsel intends to call to testify in this matter was formulated subsequent to the Regional Director's letter to you of December 18, 1975. However, that information, as the Regional Director states in his letter and for the reasons stated therein, is protected from disclosure by exemption 7(A), (C) and (D) of the FOIA.

It is also well settled that the FOIA was never intended to allow either a Charging Party or a Respondent in an NLRB proceeding greater access to any of our file information than would normally be availabee through direct litigation with our Agency. See N.L.R.B. v. Interboro Contractors, Inc., 432 F.2d 854, 857-860 (C.A. 2, 1970) cert den. 402 U.S. 915. However, all correspondence and documents either signed by or addressed to yourself or your client, or of which you have already received a copy, and any documents, including statements, submitted by you or your client will be made available at the Pittsburgh Regional Office.

In respect to the cases cited in your appeal as being controlling in the instant circumstances, please see Climax Molybdenum Co. v. N.L.R.B., _____F. Supp. _____, 90 LRRM 3126 (D.C. Col., 1975) and Mylan Pharmaceuticals v. N.L.R.B., (D.C. W. Pa., 1976) and be advised that this Agency is appealing the cases that you rely upon.

Robert E. Allen, at the direction of and pursuant to the policies established by General Counsel John S. Irving, is responsible for the determination that the records you requested are privileged from disclosure under the FOIA.

Judicial review of this determination may be obtained by filing a complaint in the district court of the United States in the district in which the complainant resides, or has his place of business, or in which the records are situated, or in the District of Columbia, as provided in the FOIA, 5 U.S. C. Section 552(a)(4)(B).

Very truly yours,

John S. Irving
General Counsel

By Robert E. Allen
Robert E. Allen
Director, Office of Appeals

cc: Director, Region 6

Page 907a is blank due to a printing error.

Respondent's Exhibit 8

R#8

Commonwealth of Pennsylvania
County of Allegheny

Affidavit

Now comes William G. Flaherty, Jr., residing at 132 Finley St, Pgh. Pa., and whose telephone number is 361-4211.

Having been duly sworn I depose and state the following:

① In early January, 1975 someone mentioned the union to me over the telephone from the Monroeville Mall store. I didn't think anything of it. In early July I was stopping at Monroeville and either Butch or Joe mentioned a letter ~~that~~ was going out about the union. I didn't know what they meant. No one asked me if I wanted to join. I never heard anyone else talk about it.

② In about the second week of September some Florsheim officials were here. ~~After that~~ Bud Brower asked me if I knew anything about the union or was in it. I told him no. He asked everyone in the store. I didn't see anyone from Chicago at ~~that~~ time.

③ A week or two before Ron Bakowski was fired he accused me of ~~stealing~~ from him by changing sales tickets. He wouldn't give me any examples. I brought it to Brower. Bakowski showed him three tickets. One was a misunderstanding on his part. The other two were correct. Brower was pretty upset by this. On Wednesday, August 27 I had a beer with Mr. Brower and he said he was going to fire Bakowski and he couldn't take it any longer.

④ The next day, August 28, Thursday Brower tried to call Bakowski. He was already gone on vacation. Brower wrote a letter then and mailed it ~~that~~ same afternoon. I don't remember if Brower showed me the letter.

⑤ Bakowski never talked to me about the union. I never heard him talk to anyone else about it either.

⑥ On Friday Brower left early. ~~[illegible]~~ Lily Scott asked me to get him a boot from ~~the~~ storeroom. At the end of the day there was no ticket on it and the box was gone. I found the box in the trash. The next morning I told Brower. Scott admitted it and stealing other shoes.

⑦ As for the part-time people being fired, the same thing happened to me at Baker's Shoe Stores ~~[illegible]~~ two and 1/2 years ago. A year and 1/2 ago Allens Shoe store did the same thing. I don't know why Florsheim changed over to full-time when it did; Perhaps because the heavy season is coming.

I have read and swear that this statement consisting of two pages is true to the best of my belief and knowledge

Sworn to and subscribed before me this 14th day of October, 1975 in Pittsburgh, Pennsylvania

Field Examiner, N.L.R.B

Respondent's Exhibit 9

THE FLORSHEIM SHOE STORE COMPANY

PITTSBURGH STORES

Comparison 1973 - 1974

1973 - $1,399,812

1974 - $1,407,949

Pittsburgh Total Increase - 1974 = .6%

National Total Increase = 8.9%

912a

Respondent's Exhibit 10(a)

PFIL0132

THE FLORSHEIM RETAIL DIVISION

PAYROLL REGISTER

BASE SALARY WEEK ENDED 01/0[illegible]/75
COMMISSIONS WEEK ENDED 01/02/75

STORE NUMBER 48815

EMPLOYEE NAME		EMPL. NO.	RATE	HOURS REG.	HOURS OTHER	SALARY BASE	SALARY OTHER	COMMISSIONS			COMMISSIONS TOTAL	P.M.	EARNINGS ADJUSTMENT	GROSS ADJUSTMENT	GROSS EARNINGS	DEDUCTIONS	NET EARNINGS	SALES	CHECK NUMBER
JAMES G BITTNER	[illegible]	35	10000	170		1700		1644	119	45	1808	250			3758	723	3035	37750	131551
TERRENCE D ONEIL	3	59	550000	400		5500		5358	1334	151	6843	1420			13763	3465	10298	154625	131552
MICHAEL J KELLY	3	65	650000	400				4508	1593	241	6342	1280			7622	1590	6032	148065	131553
DONALD R PORTER	3	74	500000	250		5000		2980	971	278	4229	430			9659	2281	7378	97540	131554
ROBERT P JEFFREYS	3	92	10000	150		1500		729	506	88	1323	290			3113	563	2550	33200	131555
ROX K ROSENBERRY	1	99	1200000	520		12000	5090	1897	651	161	2709				19799	4617	15182	90320	131556
EXEMPT COMM. SALES																		-52480	
STORE TOTAL				1909		25700	5090	17116	5174	964	23254	3670			57714	13259	44475	5,09010	

Eliminate
one P/T salesman

80.00
76.22
3.78

MANAGER
ASST MANAGER
SALESMAN
[illegible]
OTHER

48015 FLORSHEIM SHOE SHOP
SOUTH HILLS VILLAGE
1 x 1 FORT COUCH ROAD
PITTSBURGH PENNSYLVANIA 152[illegible]

	THIS YEAR	LAST YEAR	%DIFF
TOTAL WAGES	57714	62165	-716
TOTAL SALES	509010	154415	22964
WAGES/SALES	1134	4025	

913a

Respondent's Exhibit 10(b)

STORE NUMBER 48015

PAYROLL REGISTER

BASE SALARY WEEK ENDED 01/18/75
COMMISSIONS WEEK ENDED 01/25/75

EMPLOYEE NAME	CLASS	EMPL. NO.	RATE	HOURS REG.	HOURS OTHER	SALARY BASE	SALARY OTH.	COMMISSIONS			TOTAL	[illegible]	EARNINGS ADJUSTMENT	GROSS ADJUSTMENT	GROSS EARNINGS	DEDUCTIONS	NET EARNINGS	SALES	CHECK NUMBER
JAMES G HITTNER	3	38	10000	150		1900		3070	765	140	3703	500			5983	1320	4663	08987	135502
TERRENCE D ONEIL	3	59	550000	400		5500		3173	485	214	3882	780			10162	2425	7737	04263	135503
MICHAEL J KELLY	3	65	650000	400		6500		963	168	157	1288	650		-3088	5350	1049	4301	27979	135504
DONALD R PORTER	3	74	500000	40		5000		4702	803	203	5793	1740			12550	3111	9427	127855	135505
ROBERT R JEFFREYS	3	92	10000	150		1900		939	207	40	1180	40			2740	479	2267	26449	135506
ROX K ROSENBERRY	1	99	1200000	500		12000	4525E	2036	63	206	3105				19830	4571	15059	103504	135507
EXEMPT COMM. SALES																		-7399	
STORE TOTAL				2000		32000	4525	15603	2591	968	19242	3730		-3088	.56409	12955	43454	4,52530	

Eliminate our P T [illegible]

15 -

[illegible]
05.4
4.1

1. MANAGER
2. ASST MANAGER
3. SALESMAN
4. CLERICAL
5. OTHER

48015 FLORSHEIM SHOE SHOP
SOUTH HILLS VILLAGE
111 FORT COUCH ROAD
PITTSBURGH PENNSYLVANIA 15241

	THIS YEAR	LAST YEAR	%DIFF
TOTAL WAGES	56409	59663	-545
TOTAL SALES	452536	567768	-2030
WAGES/SALES	1247	1051	

RETAIL MANAGEMENT # 1

Respondent's Exhibit 10(c)

RETL0132

THE FLORSHEIMRETAIL DIVISION

PAYROLL REGISTER

STORE NUMBER 48810

BASE SALARY WEEK ENDED 01/30/75
COMMISSIONS WEEK ENDED 01/23/75

EMPLOYEE NAME	J/C	EMPL. NO.	RATE	HOURS REG.	HOURS OTHER	SALARY BASE	SALARY OTHER	COMMISSIONS			COMMISSIONS TOTAL	P.M.	EARNINGS ADJUSTMENT	GROSS ADJUSTMENT	GROSS EARNINGS	DEDUCTIONS	NET EARNINGS	SALES	CHECK NUMBER
GREGORY J KORITSKY	3	36	550000	400		5500		5495	70	293	6405	1200			13186	3298	9888	139551	136438
RICHARD D FURIS	3	53	10000	20		200			4		60				260	20	240	1995	136439
WILLIAM G MESSENGER	3	77	10000	50		500		716	15	16	890	20			1410	173	1237	19878	136440
ANDREW J HALLIDAY	3	86	10000	100		1000		648	42	63	1139	50			2189	330	1859	20480	136441
JAMES R HOLLERAN	1	99	1200000	560		12000	3766	1862	59	170	2634				18400	4683	13717	87804	136442
EXEMPT COMM. SALES																		99297	
STORE TOTAL				1130			3766			540						8504			
								8714									26941		
						19200			194			1270			35445			3,76607	
											11209								

Elimina te one 1/2 Salesman

8 - 4.20
2.10
1.10

J/C:
1 MANAGER
2 ASST MANAGER
3 SALESMAN
4 CLERICAL
5 OTHER

48810 FLORSHEIM SHOE SHOP
NORTHWAY CENTER
2124 NORTHWAY MALL
PITTSBURGH PENNSYLVANIA 15237

	THIS YEAR	LAST YEAR	%DIFF.
TOTAL WAGES	35445	40909	-1336
TOTAL SALES	376607	372645	106
WAGES/SALES	941	1098	

Respondent's Exhibit 10(d)

[illegible]

THE FLORSHEIM RETAIL DIVISION

PAYROLL REGISTER

STORE NUMBER 48805

BASE SALARY WEEK ENDED 02/13/75
COMMISSIONS WEEK ENDED 02/06/75

EMPLOYEE NAME		EMPL. NO.	RATE	HOURS REG	HOURS OTHER	SALARY BASE	SALARY OTHER	COMMISSIONS			COMMISSIONS TOTAL	P.M.	EARNINGS ADJUSTMENT	GROSS ADJUSTMENT	GROSS EARNINGS	DEDUCTIONS	NET EARNINGS	SALES	CHECK NUMBER
SAM PAVLICK	5	16	21000	300		6300									6300	1405	4895		138963
JAMES G SCHNEIDER	3	44	450000	400		4500		4449	1121	425	5995	950			11445	2911	8534	134854	138964
WILLIAM G FLAHERTY	3	53	450000	400		4500		8304	2041	662	11007	850			16357	3838	12519	247353	138965
RONALD J BAKOWSKI	3	59	450000	400		4500		7960	1348	284	9592	1300			15392	4089	11303	209797	138966
DOUGLAS FOREMAN	3	83	10000	180		1800		1373	1065	183	2561	350		379	5090	1081	4009	65284	138967
BRUCE BROWER	1	99	1550000	240	240	15500	6872	905	168	173	1246			8100	31718	7321	24397	41522	138968
EXEMPT COMM. SALES																		-11640	
STORE TOTAL				1920			6872			1677						20645			
					240			22991						8479			65657		
						37100			5733			3480			86302			6,87170	
											30401								

Reduce Pay Help

48805 FLORSHEIM SHOE SHOP
501 SMITHFIELD ST
PITTSBURGH PENNSYLVANIA 15222

	THIS YEAR	LAST YEAR	%DIFF
TOTAL WAGES	86302		
TOTAL SALES	687170	809210	-1506
WAGES/SALES	1256		

Respondent's Exhibit 10(e)

THE FLORSHEIM RETAIL DIVISION

PAYROLL REGISTER

BASE SALARY WEEK ENDED 02/13/75
COMMISSIONS WEEK ENDED 02/06/75

STORE NUMBER 48820

EMPLOYEE NAME	JOB	EMPL. NO.	RATE	HOURS REG	HOURS OTHER	SALARY BASE	SALARY OTHER	COMMISSIONS			COMMISSIONS TOTAL	P.M.	EARNINGS ADJUSTMENT	GROSS ADJUSTMENT	GROSS EARNINGS	DEDUCTIONS	NET EARNINGS	SALES	CHECK NUMBER
ROBERT M BELESKY	3	30	10000	120		1200		2158	746	35	2939	820			4959	736	4223	68727	138992
GEORGE MACKO	3	44	550000	400		5500		2786	1257	283	4326	1620			11446	2503	8943	103285	138993
THOMAS A CAPPELLO	3	59	10000	120		1200		1779	317	50	2146	320			3666	450	3216	47143	138994
JOSEPH L USSELBURN	3	65	500000	400		5000		5769	1104	192	7065	1190			13255	2703	10552	156023	138995
RONALD J MORAN	1	99	1200000	480		12000	4899	2076	1150	78	3304				20203	4731	15472	110112	138996
EXCMPT COMM. SALES																		4560	
STORE TOTAL				1520		24900	4899	14568	4574	638	19760	3950			53529	11123	42406	4,89850	

1 MANAGER
2 ASST. MANAGER
3 SALESMAN
4 CLERICAL
5 OTHER

48820 FLORSHEIM SHOE SHOP

120 MONROEVILLE MALL
MONROEVILLE PENNSYLVANIA 15146

	THIS YEAR	LAST YEAR	%DIFF
TOTAL WAGES	53529		
TOTAL SALES	489850	417267	1739
WAGES/SALES	1093		

917a

Respondent's Exhibit 10(f)

THE FLORSHEIM RETAIL DIVISION

PAYROLL REGISTER

BASE SALARY WEEK ENDED 02/13/75
COMMISSIONS WEEK ENDED 02/06/75

STORE NUMBER 48010

EMPLOYEE NAME		EMPL NO	RATE	HOURS REG	HOURS OTHER	SALARY BASE	SALARY OTHER	COMMISSIONS			COMMISSIONS TOTAL	P.M.	EARNINGS ADJUSTMENT	GROSS ADJUSTMENT	GROSS EARNINGS	DEDUCTIONS	NET EARNINGS	SALES	CHECK NUMBER
														3200	7996	1521	6475	41660	139173
ROBERT CORRIGAN	3	22	10000	200		2400		1014	551	151	1716	480			11126	2705	8421	111760	139174
GREGORY J KURITSKY	3	38	550000	400		5500		4010	784	272	5066	560		180	2468	483	2405	31342	139175
RICHARD D FURIS	3	53	10000	110		1100		1024	236	150	1410	190		534	2159	345	1810	10473	139176
WILLIAM G MESSENGER	3	77	10000	100		1000		399	33	75	501	120		163	1734	231	1903	13265	139177
ANDREW J HALLIDAY	3	80	10000	100		1000		430	141		571				17983	4441	13142	87442	139178
JAMES R HOLLERAN	1	99	1200000	620		12000	29600	1930	580	113	2623								
										761						9720			
STORE TOTAL				1590			2960	8003						4083			33750		
						23200			2325			1350			43482			2,95997	
											11809								

Eliminate 2 PT men

2 17-

16.23
+.77

4 86 10 x 2/10

1 MANAGER
2 ASST MANAGER
3 SALESMAN
4 CLERICAL
5 OTHER

48810 FLORSHEIM SHOE SHOP
NORTHWAY CENTER
2124 NORTHWAY MALL
PITTSBURGH PENNSYLVANIA 15237

	THIS YEAR	LAST YEAR	%DIFF.
TOTAL WAGES	43482		
TOTAL SALES	295997	254073	1650
WAGES/SALES	1469		

918a

Respondent's Exhibit 10(h)

RETL0132

THE FLORSHEIM RETAIL DIVISION

PAYROLL REGISTER

STORE NUMBER 48815

BASE SALARY WEEK ENDED 02/13/75
COMMISSIONS WEEK ENDED 02/06/75

EMPLOYEE NAME		EMPL NO	RATE	HOURS REG	HOURS OTHER	SALARY BASE	SALARY OTHER	COMMISSIONS			COMMISSIONS TOTAL	P M	EARNINGS ADJUSTMENT	GROSS ADJUSTMENT	GROSS EARNINGS	DEDUCTIONS	NET EARNINGS	SALES	CHECK NUMBER
JAMES G BITTNER	3	38	10000	150		1500		1720	479	06	2213	300		316	4331	876	3455	50540	138514
TERRENCE O ONEIL	3	59	550000	400		5500		3658	543	135	4336	650			10486	2519	7967	93950	138515
MICHAEL J KELLY	3	65	650000	400		6500		3537	665	287	4489	1300			12269	2704	9565	98620	138516
DONALD R PORTER	3	74	500000	400		5000		3036	855	257	4148	570			9718	2290	7428	94350	138517
ROBERT R JEFFREYS	3	92	10000	150		1500		1154	291	64	1509	230			3239	591	2648	34077	138518
ROX R ROSENBERRY	1	99	1200000	520		12000	4793E	2895	539	81	3515				20308	4759	15549	117172	138519
EXEMPT COMM. SALES																		-12765	
STORE TOTAL				2020			4793			830						13747			
								16006						316			46624		
						32000			3372			3050			60371			4,76050	
											20210								

Eleven rate P.T. men

Sales for #44 not on M/L. for 32.95

1 MANAGER
2 ASST MANAGER
3 SALESMAN
4 CLERICAL
5 OTHER

48815 FLORSHEIM SHOE SHOP
SOUTH HILLS VILLAGE
111 FORT COUCH ROAD
PITTSBURGH PENNSYLVANIA 15241

	THIS YEAR	LAST YEAR	%DIFF.
TOTAL WAGES	60371		
TOTAL SALES	479345	478064	10
WAGES/SALES	1259		

Respondent's Exhibit 10(h)

919a

RETL0132

THE FLORSHEIM RETAIL DIVISION

PAYROLL REGISTER

BASE SALARY WEEK ENDED 03/13/75
COMMISSIONS WEEK ENDED 03/06/75

STORE NUMBER 48815

EMPLOYEE NAME	JOB	EMPL NO.	RATE	HOURS REG.	HOURS OTHER	SALARY BASE	SALARY OTHER	COMMISSIONS			COMMISSIONS TOTAL	P.M.	EARNINGS ADJUSTMENT	GROSS ADJUSTMENT	GROSS EARNINGS	DEDUCTIONS	NET EARNINGS	SALES	CHECK NUMBER
JAMES G BITTNER	3	30	10000	150		1500		1359	636		1995	200			3695	705	2990	48370	143842
TERRENCE D ONEIL	3	59	550000	400		5500		604	237	112	953	560			7013	1526	5487	22215	143843
MICHAEL J KELLY	3	65	650000	400		6500	14481A	5122	956	20	6098	810			27889	6197	21692	134700	143844
DONALD R PORTER	3	74	500000	400		5000		7216	1093	220	8529	610			14139	3573	10566	185150	143845
ROX K ROSENBERRY	1	99	1200000	540		12000	4903	2163	683	104	2950				19853	4633	15220	98340	143846
EXEMPT COMM. SALES																		1485	
STORE TOTAL				1850		30500	19384	16464	3575	486	20525	2180			72589	16634	55959	4,90260	

Reduce!

41.23 – 40 – 84.83
70.17
17.97

48815 FLORSHEIM SHOE SHOP
SOUTH HILLS VILLAGE
111 FORT COUCH ROAD
PITTSBURGH PENNSYLVANIA 15241

	THIS YEAR	LAST YEAR	%DIFF.
TOTAL WAGES	72589	58368	2436
TOTAL SALES	490260	496560	-127
WAGES/SALES	1481	[illegible]	

~~[illegible]~~ ÷ 530
1/903

920a

Respondent's Exhibit 10(i)

RCTL0132

THE FLORSHEIM RETAIL DIVISION

PAYROLL REGISTER

BASE SALARY WEEK ENDED 04/03/75
COMMISSIONS WEEK ENDED 03/27/75

STORE NUMBER 48806

EMPLOYEE NAME	JOB	EMPL NO	RATE	HOURS REG.	HOURS OTHER	SALARY BASE	SALARY OTHER	COMMISSIONS			COMMISSIONS TOTAL	P.M.	EARNINGS ADJUSTMENT	GROSS ADJUSTMENT	GROSS EARNINGS	DEDUCTIONS	NET EARNINGS	SALES	CHECK NUMBER
LOUIS SCOTT JR	3	53	500000	400		5000		4130	1579	425	6134	100			11234	2710	8524	143725	147329
ARNOLD A MCGONIGLE	3	74	10000	150		1500		1958	171	105	2234	50		719	4503	353	4150	46745	147330
JAMES P BALL	3	83	10000	270		2700		1233	455	221	1909	50			4659	715	3944	44250	147331
THEODORE BREVERMAN	3	92	10000	230		2300		2982	743	349	4074	400		270	7044	855	6189	91375	147332
HOWARD B LEVINE	1	99	3269200	505		32692									32692	13712	18980	54185	147333
EXEMPT COMM. SALES																		1150	
STORE TOTAL				1555		44192		10303	2948	1100	14351	600		989	60132	18345	41787	3,81630	

Reduce P.T. Hours

16 57
10 1

1 MANAGER
2 ASST MANAGER
3 SALESMAN
4 CLERICAL
5 OTHER

48806 FLORSHEIM SHOE SHOP
200 FIFTH AVENUE
PITTSBURGH PENNSYLVANIA 15222

	THIS YEAR	LAST YEAR	%DIFF.
TOTAL WAGES	60132	60496	-60
TOTAL SALES	381630	323565	1795
WAGES/SALES	1576	1870	

Respondent's Exhibit 11 (a)

THE FLORSHEIM SHOE STORE COMPANY

PITTSBURGH - 1974 - 1975

SALES

	1975	1974	% Change
January	101,971	114,526	- 11.0
February	90,495	75,689	+ 20.2
March	117,754	106,093	+ 11.0
April	100,782	124,361	- 19.0
May	136,048	131,797	+ 3.2
June	120,772	132,114	- 8.6
July	107,886	111,812	- 3.5
August	107,668	106,176	+ 1.4
September	116,075	102,022	+ 13.8
October	121,057	117,911	+ 2.7
November	120,326	119,906	+ .4
December	172,206	165,956	+ 3.8

January to August------------------------------ - 2.1%

September to December-------------------------- + 4.7%

Respondent's Exhibit 11(b)

THE FLORSHEIM SHOE STORE COMPANY

PITTSBURGH - WEEKLY SALES

Week Ending	1975	1974	% Change
6/05/75	32,382	35,217	- 8.0%
6/12/75	32,377	32,674	- .9%
6/19/75	30,840	33,551	- 8.0%
6/26/75	24,915	26,462	- 5.8%
7/03/75	25,660	25,275	+ 1.5%
7/10/75	23,087	26,419	- 12.6%
7/17/75	26,555	27,158	- 2.2%
7/24/75	23,297	23,953	- 2.7%
7/31/75	23,163	23,332	- 0.7%
8/07/75	23,585	21,899	+ 7.1%
8/14/75	23,567	23,468	- 0.4%
8/21/75	24,433	22,113	+ 10.5%
8/28/75	23,749	22,779	+ 4.2%
9/04/75	26,276	25,501	+ 3.0%
9/11/75	25,656	26,243	- 2.2%
9/18/75	27,251	24,111	+ 13.0%
9/25/75	30,438	25,780	+ 18.0%
10/02/75	29,317	27,201	+ 7.8%
10/09/75	27,231	24,862	+ 9.5%
10/16/75	28,376	29,359	- 3.3%
10/23/75	27,433	27,106	+ 1.2%
10/30/75	24,102	21,770	+ 10.7%
11/06/75	27,943	26,768	+ 4.3%
11/13/75	23,798	27,043	- 12.0%
11/20/75	28,553	27,453	+ 4.0%
11/27/75	24,215	23,056	+ 5.0%
12/04/75	40,270	34,045	+ 18.3%
12/11/75	40,043	38,292	+ 4.5%
12/18/75	42,449	44,634	- 4.9%
12/25/75	43,110	42,161	+ 2.2%
12/31/75	25,558	22,426	+ 14.0%

Respondent's Exhibit 12

Res 12

TERMINATION NOTICE

THE FLORSHEIM SHOE SHOPS

Store at 2124 NORTHWAY MALL

Employment of following individual was terminated on: 12-21-1971 ✓

Name RONALD J BAKOWSKI

Quit ☐ Discharged ☒ Reason: DISORDERLY + ABUSIVE BEHAVIOR

Would you rehire? Yes ☐ No ☒

If no, give reason:

Date 12-24-71

Signed
Store Manager

This slip must be filled in at time employee leaves and should be attached to final pay check of employee when sent to Retail Audit Department for counter signature.

RS 125

Decision of the Administrative Law Judge

JD-588-76
Pittsburgh, PA

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

THE FLORSHEIM SHOE STORE COMPANY OF
PITTSBURGH, PENNSYLVANIA AND THE
FLORSHEIM SHOE STORE COMPANY OF
MONROEVILLE, PENNSYLVANIA

and

Case No. 6-CA-8591

RETAIL STORE EMPLOYEES UNION LOCAL 1407,
AS CHARTERED BY RETAIL CLERKS INTERNATIONAL
ASSOCIATION, AFL-CIO

E. Donald Ladov, Esq., and Ms. Amy S. Krieger, both of Pittsburgh, PA, for the General Counsel.

Proskauer, Goetz and Mendelsohn, by Marvin Dicker, Esq., New York, NY, for Respondent.

Daniel W. Cooper, Esq., Pittsburgh, PA, for the Charging Union.

DECISION

Statement of the Case

JOSEPH I. NACHMAN, Senior A.L.J.: This proceeding tried before me at Pittsburgh, Pennsylvania, on March 3-5 and 23-24, 1976, involves a complaint [1] which alleges in substance that in the course of an organizational campaign by Retail Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO (herein Union or Local 1407), The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, and the Florsheim Shoe Store Company of Monroeville, Pennsylvania, (herein Respondent or Company), interfered with, restrained and coerced its employees in the exercise of their Section 7 rights;

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[1] Issued November 26, on a charge filed September 8, and amended September 18, and October 29. All dates herein are 1975, unless otherwise indicated.

discriminatorily discharged twelve employees and transferred one employee, and failed and refused to bargain with the Union which had been duly designated by the employees as their collective-bargaining representative, thereby violating Section 8(a)(1), (3) and (5) of the Act. By answer, and at the trial, Respondent admitted certain allegations of the complaint, but denied the commission of any unfair labor practice. For reasons hereafter stated, I find certain allegations of the complaint sustained by the evidence, and recommend an appropriate remedial order.

At the trial all parties were afforded full opportunity to introduce relevant and material evidence, to examine and cross-examine witnesses, and to argue orally on the record. Oral argument was waived. Briefs submitted by the General Counsel and Respondent, respectively, have been duly considered. Upon the pleadings, stipulations of counsel, the evidence including my observation of the demeanor of the witnesses while testifying, I make the following:

Findings of Fact 2/

The two corporations referred to, which Respondent admits have at all times material operated as a single employer because of their common ownership, control, and labor relations policy, operates five retail shoe stores in the Pittsburgh metropolitan area. These are located at 200 Fifth Avenue, 501 Smithfield Street, Northway Center Mall, South Hills Village; and Monroeville Mall. The selling force at each store consists of a manager, who is admittedly a supervisor within the meaning of the Act, and a number of full and part-time salespeople. Howard Levine, manager of the 200 Fifth Avenue store, also serves as district manager and exercises general supervision over all five stores.

Sometime in March, Union Agent Best, having theretofore received a request to organize Respondent's employees met with Osselburn, Macko and Belesky, all employed at the Monroeville Mall store, to discuss futher plans to organize Respondent's employees. At this meeting the three employees mentioned signed authorization cards. 3/ The Union's campaign apparently proceeded slowly over the next few months, but on August 28 the Union wrote District Manager Levine, that it represented a majority of the employees in the Pittsburgh stores and requested recognition as bargaining agent for "all full-time and part-time selling and non-selling employees," and negotiations for an agreement, and stated that the Union stood ready to supply proof of its majority status. The registry receipt for this letter, which is in evidence, shows that it was delivered to

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2/ No issue of commerce or labor organization is presented. The complaint alleges, and the answer admits facts which establish these elements. I find those facts to be as pleaded.

3/ The validity of these three cards, and of others subsequently signed, as well as the Union's majority status, will be discussed in the section hereof dealing with the alleged Section 8(a)(5) violations.

Respondent's 200 Fifth store on Friday, August 29, and was signed for be salesman A. McGonigle. Levine admits that the letter came to his attention on August 29. A copy of this letter was sent by the Union to Louis G. Brien, General Manager of Florsheim Shoe Stores, at his Chicago office. Although there is no evidence as to when Brien received this letter, he admits that he learned of the Union's demand on September 2 (the day after Labor Day), when he received a telephone call from Levine informing him of the contents of the Union's letter of August 28. Also on August 28, the Union filed a representation petition with the Regional Office asking that it be certified as the collective-bargaining representative of "all full-time and part-time selling and non-selling personnel employed /in the five stores_/, excluding all other employees, confidential employees and guards, professional employees and supervisors as defined in the Act."

The General Counsel contends that following the receipt of the Union's letter of August 28, Respondent engaged in a campaign designed to destroy the Union's majority and avoid bargaining with it. Specifically, the General Counsel contends that Respondent interfered with, threatened and coerced its employees with the object of causing them to withdraw their support from the Union and abandon their efforts to seek union representation, transferred one employee, and terminated 12 others because of their union and concerted activities. The General Counsel additionally contends that as the Union enjoyed majority status on August 28, that to properly remedy Respondent's alleged unfair labor practices, it should be required to recognize and bargain with the Union. These contentions, and Respondent's defenses, will be considered in detail.

The alleged interference, restraint and coercion

1. Early in September, Smithfield store Manager Brower engaged part-time employee Scott in conversation regarding the Union. Brower asked Scott if he favored of the Union; whether he signed a card; and how he thought the Union would benefit him. Scott replied that he felt the Union would be of help regarding benefits and money. [4]

2. Douglas Foreman, a part-time saleman at the Smithfield store, signed a Union card on August 28. About a week later, Store Manager Brower asked Foreman if he had signed a card; why he was participating in the Union; and what he hoped to get out of it. Foreman replied that the Union was for the benefit of the men, so that the part-time employees could get what the full-time employees had, that he was participating in the Union and signed a card for the money he thought it would bring. Brower then said, suppose the Company did not agree with the Union's demands and decided to lay everyone off, and asked, then what?

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[4] Based on the uncontradicted and credited testimony of Scott. Brower, although available to Respondent, was not called as a witness.

Scott replied that if the Company wanted to lay off employees, they would just have to do so, but he was sticking with the Union. 5/

3. On August 29 or 30, Brower asked Flaherty, an employee at the Smithfield store, if the latter was in the Union. Flaherty replied that he was not. About two weeks later, Brower repeated his question to Flaherty, and the latter again replied in the negative. 6/

4. On or about September 9, Silverhorn, an admitted supervisor, came to the Smithfield store with area manager Levine. There Silverhorn engaged employee Schneider in conversation regarding the Union. Silverhorn asked Schneider what he thought about the Union. Schneider replied that he was for it. Silverhorn asked why, and Schneider replied, it was for money. Silverhorn then asked why Schneider had not come to him with his problems, and Schneider replied it was because he knew it would do no good. Silverhorn then referred to the fact that the New York employees had gone on strike, but had lost more money than they would gain from their new contract.

The following day Schneider was at the Fifth Avenue store, and Levine asked him what he and Silverhorn had discussed the preceding day. Schneider replied that they dad discussed the Union. Levine then asked why he had not been informed about the Union, whether employees Ball and McGonigle had signed cards, and whether other employees were involved with the Union. Schneider told Levine that both Ball and McGonigle had signed cards, and except for a couple of men at the South Hills Village store, all employees at the Pittsburgh stores supported the Union. Levine then asked if Schneider understood what would happen if the men went on strike, but Schneider made no reply. 7/

5/ Based on the uncontradicted and credited testimony of Scott.

6/ Based on the uncontradicted and credited testimony of Flaherty. Flaherty had been solicited to sign a card, but declined.

7/ Based on the credited testimony of Schneider. Silverhorn admits that he had a conversation with Schneider concerning the Union on September 9, but claims that Schneider started the conversation by asking if Silverhorn knew about the Union, and that the men in the Pittsburgh stores were going to have a Union. Silverhorn admits that he told Schneider that if the latter had a problem to tell him about it, and that Schneider replied that the men felt they were not earning sufficient money, and that insurance benefits were not up to standard. Silverhorn also admits that he pointed out to Schneider that the latter was earning approximately $100 a week more than he did the preceding year, and as he was leaving told Schneider that if the latter had any problems of a personal nature that Silverhorn might be of help, to please contact him. To the extent that the testimony of Silverhorn and Schneider are in conflict, I credit the latter.

Levine testified that he did not believe he had any conversation with Schneider wherein he asked the latter why he had not been informed about the Union; whether he or any other employee had (Continued)

5. On September 8, Arnold McGonigle, a part-time salesman at the Fifth Avenue store, was called to the office of store manager Levine, where Levine asked McGonigle if the latter had signed a card, and whether he had attended Union meetings. When McGonigle gave an affirmative reply, Levine stated that McGonigle should have asked his (Levine's) advice about such a matter. Levine also asked what other employees had attended Union Meetings, and McGonigle mentioned the names of some employees who worked at the Fifth Avenue store. Levine then asked what the men wanted, and McGonigle replied, money. 8/

6. On a date fixed by employee Terry O'Neil as September 9 or 10, management officials Silverhorn and Brien visited the South Hills store, Silverhorn called O'Neil to the backroom and asked the latter how he felt about the Union. O'Neil replied that he was not interested in the Union because in his view the Union would do him no good. 9/

7. About September 8, Holleran, manager at Northway Mall, engaged part-time employees Andrew Halliday and Robert Corrigan in conversation. Holleran stated that he had just returned from a meeting with Brien, attended by all the managers in the area, and because Brien wanted to bargain with each of the men separately, he was asking Halliday and Corrigan what they wanted. Halliday replied that what the men wanted was improved commission rates, better hospitalization

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7/ (Continued) signed a card; what other employees were involved with the Union; or if Schneider understood what would happen if the employees went on strike. Levine did not impress me as a frank, candid and reliable witness, and to the extent that his testimony may be regarded as in conflict with that of Schneider, I do not credit it.

8/ Based on the credited testimony of McGonigle. Levine denied that he ever asked McGonigle if he had signed a Union card; if he attended Union meetings; what other employees had done so; or why the men wanted a Union. According to Levine, he did not tell McGonigle that if the latter knew anything about the Union that he felt Levine should know about, "why don't you tell me," and that McGonigle made no reply. As indicated, I did not find Levine to be a credible witness, and therefore I have credited McGonigle.

9/ Based on the credited testimony of O'Neil. Silverhorn testified that the subject of the Union was raised by O'Neil who asked if he (Silverhorn) knew about the Union, and when he conceded that he did, O'Neil volunteered that he wanted Silverhorn to know that he was opposed to the Union, and although he had signed a card he was going to ask that it be returned to him. According to Silverhorn, he told O'Neil that whether or not he asked for his card back was a matter for him to decide. To the extent that the testimony of Silverhorn and O'Neil is in conflict, I credit the latter.

and other benefits. Holleran replied that the Union was part of the Mafia and that if the Union business continued all part-time employees would end up being terminated. Holleran also asked Halliday and Corrigan at this time, if they had joined the Union. Corrigan replied that he had, and gave his reasons for doing so. [10]

8. George Koritsky, a full-time employee at Northway Mall, signed a card on August 27. About a week later, store manager Holleran asked Koritsky what his feelings were about the Union, and if he had signed a card. Koritsky replied that he was for the Union, and had signed a card. Holleran then asked Koritsky if anyone else had signed, and the latter replied that everyone in the store had signed. [11]

9. About mid-August, Holleran engaged part-time employee Furis in conversation in a backroom of the store. Holleran asked Furis whether his fellow employee Koritsky had spoken to him about the Union. Furis replied in the affirmative. About two weeks later Holleran again discussed the Union with Furis, asking that Furis speak to the part-time employees and point out to them that if the effort for the Union continued the employees could loose the flexibility in their hours which they enjoyed, and could bring about a reduction in the part-time work force. [12]

10. During the last week or ten days of September, part-time employee Belesky, who had been terminated on September 18, went to the Monroeville Mall store, where he had a conversation with store Manager Moran. Moran asked Belesky whether he had signed a card, and whether part-time employee Sarver, who had also been terminated on September 18, had signed a card. Belesky admitted that both he and Sarver had signed a card. Moran then asked if any other employee had signed. Belesky replied that he had no information on that subject, but when he testified admitted that his answer to Moran was not truthful. [13]

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[10] Based on the uncontradicted and credited testimony of Halliday and Corrigan. Holleran did not testify.

[11] Based on the uncontradicted and credited testimony of Koritsky.

[12] Based on the uncontradicted and credited testimony of Furis.

[13] Based on the uncontradicted and credited testimony of Belesky. Moran did not testify.

11. On September 2, Joseph Osselburn, employed at the Monroeville Mall as a full-time salesman, had a conversation with store Manager Moran, who asked what was going on. Osselburn told Moran that a majority of the employees had voted to have a union. Moran asked why this was done, and Osselburn replied that it was money, pointing out that promised raises had not come through. Moran then asked who had started the Union, and who was involved. Osselburn replied that he had no idea. About two weeks later Moran again approached Osselburn in the store, and told the latter that he knew that Osselburn and Macko, also an employee of the store, were the ones who had started the Union. Osselburn made no reply. 14/

12. Early in September, George Macko, employed at Monroeville Mall as a full-time salesman, had a conversation with store Manager Moran, concerning the Union. Moran told Macko that he had learned that Macko and Osselburn were the ones who started the Union, and that in doing so they "had stirred up a beehive." As more fully detailed in the section hereof dealing with the alleged discriminatory transfer of Macko, the latter was transferred to the Fifth Avenue store on September 20. The following day, Brower, manager of the Smithfield store, engaged Macko in conversation and asked Macko why they had started a union, and if they had any problem why they had not first taken the matter up with him; that in proceeding as they did, they went about it the wrong way; and that the best thing they could do was just drop the whole idea, because there was no way they could win. 15/

13. On February 16, Patrick Hickey, who had no previous experience in shoe selling, applied to area Manager Levine at the Fifth Avenue store, for a shoe selling job. The evidence is silent as to any conversation between Hickey and Levine at this time. Later that day, Hickey received a telephone call from Holleran, manager at Northway Mall, who stated that he was in need of a salesman who could report for work immediately, and Hickey reported for duty the following day. About ten days later Holleran told Hickey that he had received a telephone call from Levine and that the latter was concerned about Hickey's attitude toward the Union. Hickey replied that he had no information about the Union, and for that reason had to be neutral. Holleran then told Hickey that if he decided to be pro-union, to see Koritsky and the latter would get him protected. The following Saturday, Levine visited Northway Mall, and while there, asked Hickey if his attitude had changed. 16/

14/ Based on the uncontradicted and credited testimony of Osselburn.

15/ Based on the uncontradicted and credited testimony of Macko. As indicated, neither Moran nor Brower was called as a witness.

16/ Based on the uncontradicted and credited testimony of Hickey. Holleran was not called as a witness, and Levine although called, gave no testimony in this area.

The Section 8(a)(3) allegations

Ronald Bakowski

Ronald Bakowski was initially employed by Respondent in May 1969, as a full-time shoe salesman assigned to work at the South Hills store. In late 1972 or early 1973, Bakowski voluntarily terminated his employment with Respondent to work for another downtown shoe store. 17/ In October 1973, Bakowski was rehired by Respondent and assigned to the Smithfield store, where he worked under the supervision of Manager Brower, until his termination, the precise date of which is in dispute, and will be hereafter resolved. Bakowski first learned of the Union's campaign in July, when employee Scott approached him about signing a card. That conversation was interrupted and the subject was not raised again until August 25, when Bakowski, at Scott's request, signed a card. 18/ Bakowski worked last on Wednesday, August 27. Thursday was his day off, and Friday was the first day of his vacation period. Thursday afternoon Bakowski called the store to find out if the pay checks were in, and ascertaining that they were, went to the Smithfield store to get his check. Bakowski reached the store about 2 p.m., picked up his check and remained at the store for about an hour. In the interim, Bakowski, in accordance with usual practice, gave store manager Brower the key to the establishment in case it should be needed while he was on vacation. After leaving the Smithfield store, Bakowski went by a bank and got his check cashed, and from there went to the Fifth Avenue store, where Area Manager Levine was in charge. Here, Bakowski spent about two hours, leaving there with Levine, the latter going for his evening meal, and Bakowski to get a bus home. While Bakowski was in the Smithfield and Fifth Avenue stores, neither Brower nor Levine said anything to Bakowski indicating that his job performance was in any way unsatisfactory to Respondent, or that his discharge was contemplated.

17/ During the period of his employment by Respondent, Bakowski was transferred to and worked at the Northway Mall, Smithfield and Fifth Avenue stores. The reason for such transfers are not disclosed by the record. A notice of termination given Bakowski in December 1971, showing that Bakowski was discharged at that time for "disorderly and abusive behavior," was offered by Respondent and received in evidence. Respondent offered no evidence regarding this incident, or to show how it fits into this case. Bakowski testified that this alleged discharge was part of a scheme to get him transferred to another store. This testimony is undenied. In any event, in view of Bakowski's subsequent rehire by Respondent, any alleged prior "disorderly and abusive behavior" was certainly condoned Respondent and cannot be relied upon to justify the discharge in this

18/ According to Bakowski he read most of the card that day, but the following day read the entire card very carefully.

The following day (Friday), Bakowski spent the entire day at home, but received no word from either Brower or Levine. Early the following day (Saturday) Bakowski left town, returning late on September 1, that being Labor Day. 19/ Tuesday morning Bakowski received a note in the mail, dated August 28, and signed by manager Brower, reading as follows:

> This is to inform you that after all of my efforts to get you to change your attitude concerning your constant "down" feelings with regard to your fellow employees and your job here, you've left no other choice for me other than to terminate your employment with The Florsheim Shoe Co.
>
> I feel this is both for your personal well being as well as Stores benefit. May I sincerely wish you good luck in your future endeavors.

The General Counsel contends, the evidence shows, and I find, that although the aforementioned note is dated August 28, it was in fact not written until Saturday morning, August 30, 20/ the day after Respondent

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19/ Joseph Bakowski, Ron's father, credibly testified that during Saturday morning he was told by his wife that someone from the store had called for Ron; that he then telephoned the store and left a message that Ron was out of town, but would be back on September 2, and could be reached that day. This testimony is uncontradicted, and I credit it.

20/ Witnesses Scott and Foreman, both employed at the Smithfield store as part-time salemen, testified that on Saturday morning, August 30, Manager Brower told them he was writing a letter to Bakowski, gave them the handwritten letter to read and asked them what they thought of it. Both identified General Counsel Exhibit 12, as the document Brower showed them. The testimony of Scott and Foreman is uncontradicted, and I credit it. In reaching this conclusion I am also pursuaded by the fact that although the record shows that Brower was available to Respondent, he was not called as a witness. The only testimony offered by Respondent in this regard, is that of Levine who testified that Brower read to him over the phone during the evening of August 28, the discharge notice Brower was sending to Bakowski. Levine, who did not impress me as a credible witness, cannot be regarded as having contradicted the testimony of Scott and Foreman. Even if it be so regarded, Respondent's reliance on the weak testimony of Levine, when the much stronger evidence of Brower was available to it, appropriately gives rise to the inference which I draw, that had Brower been called as a witness, his testimony would have been adverse to Respondent. As the Supreme Court said in Interstate Circuit v. United States, 306 U.S. 208, 225-226, "the production of weak evidence when strong is available can lead only to the conclusion that the strong would have been adverse."

received the Union's demand for recognition, rather than the day before, as Brower's note to Bakowski indicates. 21/ Respondent contends that Bakowski was discharged because of dissension between himself and his fellow employees in the store. Except for the self-serving note written by Brower, above quoted, the evidence Respondent introduced to support its claim is that of (1) Levine, (2) employees Flaherty, Scott and Foreman, and (3) certain alleged admissions made by Bakowski, while under cross-examination.

Levine testified that before Bakowski was rehired in October 1973, Brower discussed with him the wisdom of such action, and that he pointed out to Brower that there had been problems with Bakowski, and that he would be concerned about rehiring him. According to Levine, Brower stated he was aware of the situation, but felt he could handle it. Levine claims that thereafter Brower complained to him some five or six times that Bakowski was creating dissension; that it was a continuing problem and was getting out of hand. 22/

21/ Levine's testimony that he did not discuss with Brower on August 29 or 30, the fact that he had received the Union's demand for recognition, I find incredible and therefore reject it. Under the circumstances of this case including the fact that Brower did not testify, I find as a fact that when Brower wrote the note to Bakowski on August 30, he knew of the Union's demand for recognition. The authority of a trier of fact to, in an appropiate case, discredit the uncontradicted testimony of a witness and to find the facts to be the contrary of his testimony, is settled. See N.L.R.B. v. Walton Manufacturing Co., 369 U.S. 404, at 408.

22/ Levine did not give the time of these alleged complaints, nor identify precisely what Bakowski was doing, other than his descriptions of "creating dissension." Other than allegedly speaking to Bakowski on two unidentified occasions, when he claims he suggested that the latter quiet down, take things easy, and not create disturbances, which he said Bakowski accepted in a cordial and friendly manner, Levine admits that he took no action in the matter. According to Levine, Brower complained to him again a day or two after he returned from vacation on August 25, saying that he could not tolerate Bakowski any longer, and that he told Brower if he felt that way to do what he thought was necessary, but to make sure he had a replacement. Levine claims that Brower telephoned him late during the afternoon of August 28, but after Bakowski left the store, saying that he had decided to terminate Bakowski and because he knew that the latter was on vacation, suggested that Brower telephone Bakowski and inform him what was happening. According to Levine, later that day Brower (Continued)

Flaherty's testimony regarding Bakowski's conduct, I find quite unsatisfactory. Aside from one instance that Flaherty claims Bakowski addressed a vulgar remark to him, apparently in private, and certainly not on the selling floor, he did not point to a specific act or event calculated to create discord between himself and Bakowski. He claimed that the problem between them lay in the fact that Bakowski was unable to get along with him, rather than he was unable to get along with Bakowski. When asked to be specific as to anything Bakowski said or did which indicated that he objected to Flaherty, the latter resorted to the claim that Bakowski didn't like the fact that he joked with customers, and indicated his displeasure by "looks, answers, snarls." 23/ Scott testified credibly that he overheard Flaherty and Bakowski arguing with each other in the store, 24/ and frequently overheard Brower talking with Bakowski about it. 25/ Scott referred to an instance when Brower was away from the store on vacation, that he felt it necessary to tell Bakowski that he and Flaherty should not "constantly argue and bicker at each other." 26/ The only testimony given by Douglas Foreman relating to this incident was that on two occasions Brower told him that "he was tired of /Bakowski's /down

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22/ (Continued) telephoned again saying that he had been unable to reach Bakowski, and was writing him a letter which Brower read to him. Although Levine testified he never saw the discharge memorandum sent Bakowski, he identified that language thereof as being substantially what Brower read to him over the phone.

23/ Flaherty's demeanor while testifying convinced me that he had strong personal animosity against Bakowski. In that area, I credit his testimony only to the extent that it is corroborated by another witness whom I credit.

24/ Although Scott's testimony was that such arguments took place "in the store," it is unclear whether this had reference to the selling area, or to some area not frequented by customers.

25/ Scott did not say what Brower said to Bakowski on these occasions, nor did he fix the time of such events.

26/ As Scott worked for Respondent from September 1971, until his termination about mid-September 1975, with Bakowski working there after October 1973, and as the event Scott referred to occurred while Brower was on vacation, which in 1975 was during the first three weeks of August, it apparently occurred in 1974 or 1975, and is in no way inconsistent with Bakowski's version of the matter, which is hereafter set forth.

attitude"; a term which he did not know the meaning of. 27/

According to Bakowski, whom I credit, Brower did mention to him sometime on 1974, that abusive language did not fit in with the character of the store, and that he told Brower that he did not use such language in the store, or elsewhere. According to Bakowski, Brower never mentioned a matter of that nature to him again, Bakowski also admits that sometime about August 22, there was a discussion between he and Flaherty concerning alteration of sales tickets; that Flaherty took exception to something he had said, and took the matter up with Brower and the latter mentioned it to him (Bakowski), and required him to apologize to Flaherty, which the latter accepted, and that the matter was thus settled. Bakowski further admitted that in the discussion with Flaherty, there was some loud talk, although he claims that it was Flaherty that spoke in a loud voice, and that he did not do so, and that Brower mentioned this when he talked to him about the matter. 28/ According to Bakowski this was the only time Brower spoke to him about loud talk, and under all the circumstances, I credit him in that regard.

. The Transfer of Macko

George Macko was employed by Respondent at Monroeville Mall, in March 1971 as a full-time salesman, and worked there until his transfer to the Fifth Avenue store, effective September 20. 29/ Respondent makes no claims that Macko's job performance was in any respect unsatisfactory. Macko was one of the three employees who met with union agent Best on March 26, which was the inception of the Union's campaign to organize Respondent's employees. 30/ At that time Macko as well as the other two employees, signed a card, and Macko thereafter solicited several employees to sign cards. As heretofore found, in early September, Moran manager at Monroeville Mall, told Macko that he and Osselburn had started the Union movement, and that by doing so they had stirred up a beehive.

27/ As in the case of Scott, Foreman did not give a time for these conversations. They obviously occurred during the period of his employment, which was from October 1974 to his termination in September 1975, accordingly, Foreman's testimony presents no inconsistency with that of Bakowski.

28/ I find it unnecessary to make a finding as to whether it was Bakowski or Flaherty, both, or neither, that spoke in a loud voice.

29/ The General Counsel contends, but Respondent denies, that this transfer was discriminatorily motivated.

30/ The other two employees that attended this meeting were Osselburn and Belesky, also employed at the Monroeville Mall store.

On September 17, Paul Holmes 31/ telephoned Macko and asked that he come to the Smithfield store to discuss an important matter. When Macko arrived, Holmes told him that on September 19, he would be working at the Fifth Avenue store, suggesting that the move meant a promotion for Macko and an opportunity to earn more money. Macko asked if he had any choice in the matter. Holmes replied that Macko did have a choice, and that he should think the matter over and give Holmes his decision the next day. The following morning Macko telephoned Holmes and stated that he would not accept the transfer because he did not regard it as beneficial to him. Holmes replied that he was sorry that Macko felt that way; that someone had to be in the Fifth Avenue store by the end of the week; that he would reevaluate the situation and hoped he could find a way to honor Macko's request.

According to Macko, on September 19, he learned that all the part-time salesmen had or would be terminated, and later that day Holmes came to the Monroeville Mall store and had a long talk with manager Mc[illegible]an, which Macko did not hear. Following this conversation, Holmes told Macko that there was no way the latter could be kept at Monroeville Mall; that his (Holmes) job was to put the right people into the right place; that Macko was already on the payroll at Fifth Avenue; and that he had to start working there the following morning. Macko then told Holmes that he had personal reasons for not wanting to move to the downtown store; that his father was very old and ill, and in addition was an alcoholic, and if a problem arose, it was only a few minutes from the Monroeville Mall store to his home, but that he did not drive a car and would have to use public transportation which would take him over an hour. Holmes replied that he sympathizad with Macko's problems, and if an emergency arose he was authorized to leave the store and go home by cab, but that he had to report for work at Fifth Avenue the following day. Macko reported for work as directed, and at the close of the trial in this case was still working at Fifth Avenue.

The evidence shows that while employed at Monroeville Mall, Macko worked a 40-hour week, for which he was paid a salary of $55.00, plus a bonus of $10.00, a commission on sales, and that from January through September 1975, his average weekly earnings were $126.47. At Fifth Avenue, Macko works a 48-hour week, for which he is paid a salary of $65.00, received no bonus, but does receive commission. In the period from October 1975 through March 18, 1976, Macko's average weekly earnings were $160.16. 32/

31/ Holmes, at the time of the events here involved, was administrative assistant to Brien, Respondent's National General Manager. Holmes' office is in Chicago, and he is admittedly a supervisor within the meaning of the Act.

32/ The findings in this section are based on the uncontradicted testimony of Macko, the testimony of Holmes, which is substantially in accord with that of Macko, and the stipulation of Counsel as to Macko's earnings.

The Termination of the Part-time Employees

As heretofore indicated, prior to about September 18, the five stores which Respondent operates in the Pittsburgh area, were staffed by both full-time and part-time employees. 33/ The complaint alleges that on about September 18, Respondent terminated all of the part-time employees because they engaged in concerted activities, and to discourage membership in the Union. Respondent, admitting the termination of the 11 part-time employees, 34/ contends that said employees were terminated only to implement plans based on business considerations, formulated prior to learning that the Union was organizing the employees, that it would thereafter employ only full-time sales personnel; that it offered full-time employment to the 11 people before terminating them, and that each declined to work the hours Respondent required. The issue thus posed is simply one of Respondent's motive in terminating the part-time employees.

The 11 part-time employees involved were in the main, students or people who had another job which was their primary activity, and this fact was known to Respondent at the time of their hire. All worked a schedule of hours, most evenings and Saturdays, which permitted them to work for Respondent when they were not otherwise engaged with their primary activities. 35/ Prior to their termination these employees had never heard that Respondent had any policy of employing only full-time salesmen. In fact, a number of these employees testified without contradiction that when they were informed of their termination they were told by their store manager that Respondent was instituting a new policy.

33/ The evidence shows that on the payroll list for August 28, the staffing of the stores was as follows:

> Fifth Avenue, one full-time and two part-time; Smithfield Avenue, three full-time and two part-time; Northway Center, one full-time and four part-time; South Hills, four full-time; and Monroeville Mall, two full-time and three part-time, for a total of 11 full-time, and 11 part-time employees.

34/ The evidence shows 12 part-time employees were in fact terminated. However, the complaint names only eleven (Louis Scott being the one not listed). As the complaint does not list Scott and Respondent was in no way put on notice that the General Counsel intended to include Scott, I do not regard Scott's status to have been litigated, and make no findings as to him.

35/ All were paid for the hours actually worked, at the rate of $1.00 an hour, plus a commission on sales of 5 percent on non-Florsheim shoes; 10 percent on Florsheim shoes; and 5 percent on accessories.

Respondent's defense to this aspect of the case is basically that in January 1975, in the exercise of a business judgment, it embarked upon a campaign to eliminate all part-time salesmen, and to staff its selling force only with full-time personnel. To support this defense Respondent relies upon the testimony of Louis G. Brien, National General Manager of Florsheim Shoe Shops; Ted Silverhorn, supervisor of retail stores in an area which includes Pittsburgh; Paul Holmes, who at the time of the events here involved was administrative assistant to Brien; and Harold Levine, area manager for the five stores here involved. 36/

Brien, who supervises about 300 stores nationally, testified that in late 1974, he noticed from the sales and other financial reports that regularly came to him, that although sales were up in the Pittsburgh stores about .006 percent in 1974 over 1973, this was substantially below the national average of about 8 percent, and that profits had suffered accordingly. Brien testified that beginning in January 1975, and almost weekly for the next three months, he discussed the situation with Silverhorn, and the conclusion was reached that the stores were properly stocked, and that the difficulty had to be the fact that a large percentage of the selling force was part-time, and that they were less efficient and less informed regarding styles and sales techniques than full-time employees. For this reason, according to Brien, the decision was then made to eliminate all part-time employees and replace them with full-time personnel, and that on each occasion thereafter when he talked with Silverhorn regarding the matter, he directed the latter to see that the decision reached was effectuated as quickly as possible. 37/ According to Brien, during the first three months of 1975, Silverhorn told him a number of times that his directive had been communicated to Pittsburgh area manager Levine, and that the latter gave numerous excuses for not complying with Brien's order, the principal one being that sufficient full-time sales people was not available in the Pittsburgh area, and that on each occasion he reminded Silverhorn that his order to eliminate the part-time help in Pittsburgh must be complied with. 38/

36/ All of these individuals are stationed in Chicago, except Levine, who operates out of the Fifth Avenue store in Pittsburgh.

37/ Brien identified a number of weekly payroll reports for the period from January through March 1975, on which he stated he made notations directing reductions in part-time employees, and that he gave those documents to Silverhorn with instructions to carry out his directive.

38/ Except for three part-time people hired between after January 1 (Corrigan on January 15; McGonigle in March; and Paranzino on August 25, the latter being a stockboy and not a salesman, there is no evidence of changes in personnel at the various stores between January and the termination of all part-time employees in mid-September; the part-time employees then constituting about one-half of the selling force.

According to Brien, during the months April, May and June he gave the matter involved no attention because he was occupied with other important business, 39/ although he admittedly was in communication with his office from time to time during this period. Admitting that he was available in his office during the month of July, Brien testified that the Pittsburgh situation was not discussed with his staff during that time; as Brien put it, he did ask for any reports, and none were furnished him. Brien testified that he was on vacation during the first two weeks of August, and that upon return to his office one of the notations on his calendar was to follow-up on the progress made on his directive that the part-time help in Pittsburgh be eliminated, and that he then asked Silverhorn for a report, and that the latter advised that nothing had been accomplished, and that the number of part-time employees in the Pittsburgh stores remained unchanged; that he had informed Levine of Brien's directive a number of times, but that it was Levine's position that full-time people were unavailable in Pittsburgh. According to Brien, he then directed Silverhorn to inform Levine that the latter was relieved of further responsibility regarding the part-time employees, and that henceforth he (Brien) would handle the situation himself in order that his objective might be accomplished as quickly as possible. 40/ Brien additionally testified that at the same time he directed Holmes to check with the training school his company operates in Chicago, and with store managers in other cities, to ascertain the availability of full-time sales people who might be available for transfer to Pittsburgh.

In the meanwhile, according to Brien, he learned on September 2, in a telephone conversation with Levine, that the Union had demanded recognition; that he immediately telephoned his counsel in New York, and after some discussion, which included Brien's plan to replace the part-time employees, it was decided that Brien and Counsel would meet in Pittsburgh on September 8, and that until that meeting no action would be taken regarding the termination of the part-time employees. According to Brien, he, Silverhorn and Company Attorney Dicker met in Pittsburgh on September 8, with area manager Levine, and thereafter separately with each of the other store managers, and that final decision was made that day to proceed as orginally planned to eliminate all part-time employees in the Pittsburgh stores. 41/ According to Brien, following this decision,

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39/ An extended business trip to the West Coast during April, and collective bargaining for the New York stores in May and June.

40/ Brien testified that Silverhorn informed him on August 25, that his instructions had been communicated to Levine.

41/ Brien testified that the only store manager he told of his decision to eliminate the part-time employees, was Levine, and that to the best of his information Levine did not so inform any other manager. As the section hereof dealing with the Section 8(a)(1) events show, virtually every manager interrogated employees concerning their Union activity, and that some of them threatened that part-time employees would be terminated if the activity on behalf of the Union continued.

he telephoned Holmes at his Chicago office and directed the latter to proceed with the plan to terminate all the part-time employees in Pittsburgh and replace them with employees transferred from Florsheim stores in other cities.

Without detailing the testimony of Holmes, Silverhorn and Levine, suffice it to say that they corroborate the testimony of Brien. Additionally, Holmes testified that pursuant to instructions given him by Brien, he went to Pittsburgh on September 15, and met immediately with the store managers to explain his mission. According to Holmes he instructed the store managers to ascertain from each part-time employees in the respective stores, if any of them would be willing to work full-time and that he and the manager would meet again on September 18, at which time the managers would report what response had been received from the part-time employees. Holmes testified that at the meeting on September 18, it came to his attention that Corrigan was the only part-time employee who indicated availability to work a full-time schedule, but that in his view the schedule Corrigan proposed was not sufficiently flexible for the downtown store, and therefore directed that Corrigan, and all the remaining part-time employees be terminated. 42/

42/ Corrigan, a college student, was employed at the Northway store for about 8 months, as a part-time salesman, normally working 30 to 35 hours a week. Corrigan testified that on September 16, Holmes asked him if he would be willing to work a full 40-hour week, and that he replied in the affirmative, saying that it was only a few hours more a week than he was then working, and that he could fit that into his school schedule. When Corrigan reported for work the following day, he was told by store manager Holleran that he (Corrigan) was being terminated because Holmes wanted a 48-hour week. According to Corrigan he then went to see Holmes and showed him his school schedule, and a work schedule showing that he could work up to 51 hours a week without interfering with his school schedule, and that Holmes replied that he would think the matter over, but that he wanted an older man to wait on the older customer, and that Holmes then telephoned the Northway Mall store and told the manager to permit Corrigan to work that day, and that he would thereafter place Corrigan at a different location. The following day (September 19) when Corrigan reported for work at Northway Mall, he was told by manager Holleran that Holmes had directed that Corrigan be terminated because the schedule of available hours he had submitted, was not adequate for the downtown stores.

Holmes testified that by September 18, he had completed arrangements for seven salesmen to transfer to the Pittsburgh area stores from stores operated by Florsheim in other cities. The parties stipulated that:

(1) Kurt Federschmidt reported for duty in a Pittsburgh store on September 16, pursuant to transfer from a Philadelphia store, and that he first learned of this transfer about September 9.

(2) Kenneth Sennington began working in Pittsburgh on September 18, pursuant to transfer from a Philadelphia store, and that he first learned of his transfer on September 17.

(3) Daryl Christensen began working in Pittsburgh on September 18, pursuant to transfer from the Erie store, and that he first learned of his transfer about September 10. On September 1, the work force at the Erie store consisted of the manager, two full-time and one part-time employee; that at the time of the trial herein, Christensen was the manager of the Erie store, and that the work force consisted of himself as manager, with two full-time and one part-time salesmen.

(4) Raymond Wolfe began working in Pittsburgh on September 18, pursuant to transfer from Philadelphia, and that he first learned of his transfer about September 10.

(5) Steven R. Gains began working in Pittsburgh on September 18, pursuant to transfer from Philadelphia, and that he first learned of his transfer about September 10.

(6) Michael Watson began working in Pittsburgh on September 18, pursuant to transfer from New York, and that he first learned of his transfer in early September.

(7) Harold Friderich began working in Pittsburgh on September 18, pursuant to transfer from Chicago.

The Section 8(a)(5) Allegations

The complaint alleges as the appropiate unit that which was set forth in the representation petition filed by the Union on August 28 (p. 3 supra). By its answer Respondent raised no issue as to the appropriateness of the unit. It does claim however, that the appropriateness of the unit must be determined by the Board after a hearing, and that such hearing has not been held, nor has such determination been made by the Board.

General Counsel's Exhibit 2, received in evidence by stipulation, shows that there were 22 persons on the payroll in the five stores on August 28. Appendix A attached shows the distribution of the employees among the five stores, whether the employee was part-time or full-time, if a card signer, the date of signing and when the card came into the Union's possession. Reference to Appendix A shows that 12 of the 22 employees on the payroll on August 28, were employed part-time. Of the 12, cards were signed by 11. 43/ Of the 10 full-time employees 6 signed cards, making a total of 17 cards received by the Union. The earliest date on the cards is March 26, and the last date on which cards were signed was August 28. 44/ The three cards signed on August 28, however, were not received by the Union until September 2. Of the 14 cards which the Union had in its possession when it sent its demand letter of August 28, 11 card signers testified that they read the card before signing it. In addition, one signer (Koritsky) testified that except for the small print, he read the entire card before signing. Also, one employee (Messenger) testified that he was called at home by fellow employee Halliday, who read the card to him, and that he gave Halliday the information necessary to fill in the blanks, and authorized Halliday to sign his name to the card.

The top portion of the cards signed by the employees is reserved for the name, address, social security number, and similar information concerning the employee, and the name and address of his employer. This is followed by the signature of the employee, and the date thereof. Opposite the line for signature, in very small print, is a printed legend to the effect that the signer applies for membership in the International Union, declares his statements on the card to be true, and authorizes the International Union to represent him for purposes of collective bargaining and handling of grievances, either directly or through such local union as it may designate. In the center of the card, in large bold face type, appears two lines. The first line, in black, reads: "Retail Clerks International Association-Local Union No. 1407." The second line, in red reads: "Check-off Assignment and Authorization Card." This is followed by a line where the name of the firm is filled in, and this in turn is followed by a legend in normal size type whereby the employee, whose signature appears at the bottom of the card, assigns to the Union so much of his wages as may be necessary to pay his dues and assessments, and authorize the employer to remit such deductions to the Union, and limiting the period during which the assignment is to be in effect. There is no testimony that any employees was told that the cards

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43/ The only part-time employee who did not sign a card was Furis.

44/ Three cards are dated March 26; one card March 29; one card card August 6; three cards August 13; two cards August 25; four cards August 27; and three cards August 28.

would be used only for some limited purpose other than what appears on the card. Of the fourteen cards in the Union's possession when it sent its demand letter, nine testified that they read the small print to the left of their signature, before they signed; two testified that they did not read the legend; two testified that they read the entire card without specifying whether they read that portion of the card, or not; and one (Messenger) testified that the entire card was read to him over the phone before he authorized Halliday to sign his name to it.

Of the three cards received by the Union on September 2, two employees (Foreman and O'Neil, testified that they read the entire card, including the portion in small type, before signing; the other employee (Paranzino) testified that he read the card, but not the small print, before signing.

Upon the foregoing, I find and conclude that on August 28, the date of the Union's letter, as well as on August 29, when Respondent received that demand, the Union had 14 cards in its possession signed by Respondent's employees, and on September 2, the Union received three additional cards, for a total of 17 cards. As the unit on August 28 consisted of 22 employees, 45/ I find, that the Union was on August 28, and at all times thereafter, the duly designated collective-bargaining representative of the employees involved.

Contentions and Conclusions

Upon consideration of the facts as above found, I find and conclude that Respondent violated the Act in the following particulars:

1. The Section 8(a)(1) violations.

(a) Brower's interrogation of Scott as to whether the latter favored the Union; whether he had signed a union card; and how he thought the Union would help him. In the circumstances of this case, Brower's interrogation of Scott, and the interrogation of other employees hereafter mentioned, could only have been for the purpose of ascertaining the Union sympathies and attitudes of the employees. Such interrogation without assurance against reprisal, reasonably tends to be coercive, and hence was violative of Section 8(a)(1) of the Act. Long Island Limousine Service Co., 191 NLRB 94, Order enforced. 468 F.2d 292 (C.A.2).

45/ This includes Bakowski who, Respondent contends was discharged for cause on August 28. When Bakowski was terminated and whether the termination was discriminatorily motivated are issues disposed of in another section hereof. The only other changes in the unit occurred September 18, when the part-time employees were terminated. The lawfullness of said termination is also disposed of elsewhere herein.

(b) For the same reason Brower's interrogation of Foreman as to whether the latter had signed a card; why he was in the Union and what he hoped to get out of it, was violative of Section 8(a)(1). Long Island Limousine Service Co., supra. In this instance the coercive character of Brower's interrogation is made manifest by Brower's suggestion to Foreman that if Respondent did not agree with the Union's demands, and decided to lay off employees, asking, "then what?"

(c) For the same reasons Brower's interrogation of Flaherty as to whether the latter was in the Union, was coercive. The fact that Flaherty was opposed to the Unions, is of no relevance; the interrogation required Flaherty to declare himself as being either in favor of or opposed to the Unions.

(d) For the same reason Silverhorn's interrogation of Schneider, as well as Schneider's interrogation by Levine as to whether employees Ball and McGonigle had signed union cards, and if Schneider understood what would happen if the employees went on strike, was in the circumstances of this case, all ceorcive and hence violative of the Act.

(4) Levine's interrogation of McGonigle as to whether the latter had signed a union card and attended Union meetings, and what other employees had done so, was for the same reason, equally coercive.

(f) Silverhorn's interrogation of O'Neil as to how the latter felt about the Union. The fact that O'Neil indicated that he had no interest in the Union is of no relevance; the interrogation required O'Neil to declare himself as being for or against the Union.

(g) Holleran's interrogation of Halliday and Corrigan as to whether they had joined the Union, as well as his statement to them on or about September 8, that if the activity on behalf of the Union continued, all of the part-time employees would end up being terminated. This was plainly a threat to discharge because of Union activity by employees, which has been uniformly held by the Board to be coercive and hence violative of Section 8(a)(1) of the Act. In view of the actual termination of all part-time employees about September 18, Holleran's statement was more than prophetic.

(h) Holleran's interrogation of Koritsky as to what the latter's feelings were about the Union; whether he had signed a union card; and if any other employees had done so. In the circumstances of this case, this interrogation was coercive, Long Island Limousine Service Co., supra.

(i) Moran's interrogation of Osselburn as to why the employees were seeking union representation; what employees were promoting the effort; as well as Moran's subsequent statement that he had ascertained that Osselburn and his fellow employee Macko, were the ones who initiated the Union movement. These conversations were plainly coercive because they tended to cause Osselburn to fear that Respondent would retaliate against them, and hence violated Section 8(a)(1) of the Act.

(j) For the same reason Moran's statement to Macko that he had learned that Macko and Osselburn were the ones who had started the Union, and that in doing so they had stirred up a beehive, violated Section 8(a)(1) of the Act.

(k) Brower's question to Macko as why the employees had started a union, as well as his statements to Macko that if the employees had any problems they should have taken them up with him; that in proceeding as they did, they went about it the wrong way; and that the best thing they could do was just drop the whole idea, because there was no way they could win. This was clearly interference with the organizational rights of the employees, and hence a violation of Section 8(a)(1) of the Act. [46]

2. The Section 8(a)(3) violations.

(a) The discharge of Bakowski

Upon consideration of the entire record, I am convinced, and therefore find and conclude that Bakowski's discharge was discriminatorily motivated, and hence violated Section 8(a)(3) of the Act. I reach this conclusion on the totality of the following considerations.

(i) Bakowski, with one break in his employment, had worked for Respondent for many years, and continously from the fall of 1973, until his termination on late August 1975. Although the evidence shows that there was some personality conflict between Bakowski and Flaherty, concerning which Manager Brower found it necessary to speak to Bakowski the matter appears to have been smoothed over when Bakowski apologized to Flaherty, and Brower does not appear to have regarded the incident of sufficient seriousness to warrant disciplinary action against Bakowski, until after learning of the

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[46] The General Counsel asserts, and Respondent denies that Section 8(a)(1) of the Act was violated by Moran's interrogation of Belesky, after the latter ceased to be an employee of Respondent, and by Holleran's statement to Hickey in February 1976, that the company was concerned about Hickey's sentiments concerning the Union. I find it unnecessary to decide these issues, because however these issues might be decided, the scope of the order to be entered would be the same.

Union's demand for recognition.

(ii) Bakowski talked with both Brower and Area Manager Levine in their respective stores on August 28, and neither said anything to Bakowski at that time to indicate that his work performance was in anyway unsatisfactory, or that his services would not be needed following his return from vacation.

(iii) On August 29, Respondent learned of the Union's organizational campaign and of its demand for recognition, through the delivery of the Union's letter to Area Manager Levine. Although Levine testified that he did not discuss the Union's demand for recognition with Brower until the following week, I have discredited his testimony in that regard, and have found that he in fact discussed the contents of that letter with Brower promptly after its receipt.

(iv) Although the termination letter Brower sent Bakowski is dated August 28 (before Respondent received the Union's demand for recognition), I have found that said letter was in fact written on August 30, immediately following discovery of the organizational activity among the employees. The evidence also shows, as I have found, that on August 29 or 30, Brower interrogated Flaherty as to the latter's participation in the union activity.

(v) What all this adds up to is that an employee of relatively long tenure, and whose services appear to have been satisfactory to Respondent, is suddenly discharged, hard upon discovery that the employees were engaged in seeking union representation, a result which, as the evidence shows Respondent strongly opposed.

(vi) From the foregoing, including the fact that I have rejected Respondent's assigned reason for the discharge, it is appropriate to infer, as I do, that the termination of Bakowski was motivated by some consideration which Respondent has purposely failed to reveal, and the only motive apparent from this record is that Respondent thought that Bakowski was a force in the attempt to organize the employees, which effort had just come to Respondent's attention. The fact that Brower went to all the trouble to backdate the dismissal letter to Bakowski, and that Respondent then failed to call Brower as a witness to support its claim of a lawful discharge, provides additional support for the inference I draw. As the Court of Appeals for the Ninth Circuit stated the principle in Shattuck Denn Mining Corporation v. N.L.R.B., 362 F. 2d 466, 470:

> If he /the trier of fact/ finds that the stated motive for a discharge is false, he certainly can infer that there is another motive. More than that, he can infer that the motive is one that the employer desires to conceal--an unlawful motive--at least where, as in the instant case, the surrounding facts tend to reinforce that inference.

Accordingly, for the reasons stated, I find and conclude that by discharging Bakowski, Respondent violated Section 8(a)(3) and (1) of the Act.

(b) The termination of the part-time employees

Additionally, I find and conclude that Respondent's termination of the 11 part-time employees on September 18, was discriminatorily motivated. I reach this conclusion upon the totality of the following considerations:

(i) Respondent's strong antiunion animus is made abundantly clear by the coercive statements made by management officials to employees, as herein found.

(ii) Respondent makes no claim that the work performance of any of the part-time employees was in any way unsatisfactory.

(iii) As herein found, most of the part-time employees were coercively interrogated by the store managers with respect to their participation in the Union, and some were told that their continued support of the Union would bring about the termination of all part-time employees.

(iv) When the demand for recognition was made by the Union, Respondent's employee force consisted of 22 employees, 12 of whom were part-time. Respondent's interrogation of the employees, as above found, disclosed to Respondent that the strength of the Union's support lay with the part-time employees (11 of 12 signed cards). By terminating those employees and replacing them with transfers from stores in other cities, the Union's majority was destroyed.

(v) Respondent's defense to this aspect of the case is, as heretofore detailed, that Brien decided back in January that part-time sales people in the Pittsburgh area should be replaced with full-time personnel, and that for more than 6 months Levine, although pressured by Silverhorn to effectuate Brien's orders, continuously ignored them, and that it was not until Brien took over personal direction of his plan, which just happened to coincide with the Union's demand for recognition, was the prior plan effectuated. Although the testimony of Brien, Silverhorn, Holmes and Levine is in accord in this area, I do not credit them. In passing on the credibility of witness, I have believed many things, but credulity has its limitations, and in my view one would have to be credulous indeed to believe that in a company like Florsheim Shoe Stores, which operates on a national scale, the National General Manager would sit by and watch his orders flaunted by a local manager, and not take some very positive action against the latter. 47/

47/ Silverhorn, testified that he spoke with Levine on the subject approximately 20 times, but that the latter only gave excuses as to why Brien's order could not be carried out. It would be wholly unrealistic to believe that Silverhorn did not report such facts to Brien. To the extent that his testimony is to the contrary, I reject it.

My consideration of the entire record convinces me, and I therfore find that the testimony as to when and how the decision to terminate the part-time employees was made was concocted in the effort to establish legitimacy for these terminations when no legitimate reason in fact existed.

(vi) The fact that Respondent advanced what I find to be a false reason for the termination of the part-time employees, appropriatiely gives rise to the inference which I draw, that in terminating the part-time employees Respondent was motivated by some consideration which it desires to conceal, and the only motive apparent from this record is its antipathy to the union activity of those employees. Shattuck Denn Mining Corporation v. N.L.R.B., supra.

Accordingly, for the reason stated, I find and conclude that by terminating the 11 part-time employees on or about September 18, Respondent violated Section 8(a)(3) and (1) of the Act.

(c) The transfer of Macko

I also find and conclude that Respondent's involuntary transfer of Macko from the Monroeville Mall store to the Fifth Avenue store, on September 20, was discriminatorily motivated, and hence violative of Section 8(a)(3) and (1) of the Act. I reach this conclusion on the totality of the following:

(i) Respondent makes no claim that Macko's work performance during the 4-½ years of his employment at the Monroeville Mall store as a full-time salesman, was other than satisfactory.

(ii) Respondent's antiunion animus is, as I have found, clearly established by the evidence.

(iii) The evidence shows that Macko was one of the three employees who made the initial contract with the Union, attended the initial meeting with the union representative on March 26, at which time he signed a union card.

(iv) Early in September, Store Manager Moran told Macko that he (Moran) had ascertained that Macko and Osselburn 48/ were the ones that had started the Union, and that in doing so they "had stirred up a beehive."

48/ Also a full-time salesman at the Monroeville Mall store.

(v) With the termination of Bakowski in late August, and the 11 part-time employees on or about September 18, the only store left with as many as 2 employees who had signed a union card was Monroeville Mall, where both Macko and Osselburn were employed. [49/] By insisting that Macko transfer from Monoreville Mall to Fifth Avenue, a transfer which Macko did not seek and which he sought to avoid, Respondent broke up the association which had existed between Macko and Osselburn, the two employees known by Respondent to be the spearhead of the union activity among the employees.

(vi) The only reason assigned by Respondent for insisting upon the transfer of Macko, is that given by Regional Sales Manager Holmes, who testified in substance that it was his function to see that employees were placed where they could best promote the Company's business. Holmes gave no testimony as to why Respondent's purpose would not have been adequately served by the transfer of Kelly, Jeffreys or Bittner from the South Hills store, none of whom had signed a union card.

(vii) Considering all of these factors, I am convinced and therefore find and conclude that in transferring Macko from Monroeville Mall to Fifth Avenue, Respondent was motivated by the desire to punish him for efforts on behalf of the Union, and separate him from Osselburn who, along with Macko, had started the union movement, thereby discriminating against Macko, to discourage membership in the Union, thereby violating Section 8(a)(3) and (1) of the Act.

3. The Section 8(a)(5) allegations

Having found that on August 28, when the Union made its demand for recognition, it represented a majority of Respondent's employees in an appropriate unit, the only remaining question is whether, under the circumstances of this case, Respondent should be directed to bargain with the Union. The answer, I find and conclude, must be in the affirmative. The unfair labor practices herein found, particularly the discharge of 12 of 22 employees in the unit, and which in fact destroyed the union majority, were of such a grievous and pervasive character as to make the holding of a fair election extremely doubtful if not impossible, and therefore a bargaining order is appropriate, notwithstanding the absence of a Board-conducted

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[49/] As appears more fully from Appendix A, these employees were Schneider at Fifth Avenue; Scott at Smithfield; Koritsky at Northway Mall; O'Neil at South Hills; Macko and Osselburn at Monroeville Mall. Although Flaherty was employed at Smithfield, and Kell Jeffreys and Bittner at South Hills, none of these employees had signed cards, a fact with which Respondent must have been familiar, in view of the extensive interrogation of employees disclosed by this record.

election. N.L.R.B. v. Gissel Packing Co., Inc., 395 U.S. 575, 610-615; Honda of Haslet, 201 NLRB No. 128; Shulman's, Inc., 208 NLRB No. 117. In Gissel Packing, supra, the Court specifically held that a bargaining order is proper ". . . where an employer has committed independent unfair labor practices which have made the holding of a fair election unlike or which have in fact undermined a union's majority . . . " (emphasis added), and that in such cases were the Board to "enter only a cease-and-desist order and direct an election . . . it would in effect be rewarding the employer and allowing him to 'profit from /his/ own wrongful refusal to bargain.'" Finally, and by way of summarizing its holding, the Court stated that where "the possibility of erasing the effects of past /unfair labor/ practices and of ensuring a fair election . . . is slight and that employee sentiment once expressed through cards would, on balance, be better protected by a bargaining order, then such an order should issue." (395 U.S. at 614-615).

Accordingly, and for the reasons stated I find and conclude that by failing and refusing, since August 29, 1975, to recognize and bargain with the Union as the collective bargaining representative of its employees in an appropriate unit, Respondent violated and continues to violate Section 8(a)(5) and (1) of the Act.

Upon the foregoing findings of fact, and the entire record in the case, I state the following:

Conclusions of Law

1. Respondent is an employer within the meaning of Section 2(2) of the Act, and is engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. The Union is a labor organization within the meaning of Section 2(5) of the Act.

3. By the conduct set forth in section 1 (a)-(k) hereof, Respondent interfered with, restrained and coerced its employees in the exercise of rights guaranteed them by Section 7 of the Act, and thereby engaged in, and is engaging in unfair labor practices proscribed by Section 8(a)(1) of the Act.

4. By discharging Ronald Bakowski, Thomas Cappelo, James P. Ball, Douglas Foreman, Larry Paranzino, Arnold McGonigle, Andrew Halliday, William Messenger, Robert Corrigan, Richard Furis, Robert Belesky, Michael Sarver, and by transferring George Macko, all as herein found, because of their assistance to and support of the Union, Respondent discriminated against each of them in regard to their hire, tenure of employment, and the terms and conditions thereof, discouraging membership in a labor organization, and thereby engaged in, and is engaging in unfair labor practices proscribed by Section 8(a)(3) and (1) of the Act.

5. On August 28, the Union was, and at all times since has been, the duly designated collective-bargaining representative of Respondent's employees in a unit composed of all full-time and regular part-time selling and nonselling employees employed by the Florsheim Shoe Stores Company of Pittsburgh, Pennsylvania, and the Florsheim Shoe Stores Company of Monroeville, Pennsylvania, at its retail stores at 200 Fifth Avenue, 501 Smithfield Street, Northway Center Mall and South Hills Village Shopping Center in Pittsburgh, Pennsylvania, and at their retail store at Monroeville Mall, Monroeville, Pennsylvania, excluding office clerical employees and guards, professional employees and supervisors as defined in the Act, a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

6. On or about August 29, the Union demanded, and at all times since has continued to demand, that Respondent recognize and bargain with it as the duly designated collective-bargaining representative of the employees in the aforesaid appropriate unit.

7. By refusing on August 29, and at all times thereafter, to recognize and bargain with the Union as the collective-bargaining representative of the employees in the aforesaid appropriate unit, Respondent engaged in, and is engaging in unfair labor practices proscribed by Section 8(a)(5) and (1) of the Act.

8. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

The Remedy

Having found that Respondent has engaged in and is engaging in unfair labor practices proscribed by the Act, it will be recommended that it be required to cease and desist therefrom and to take the affirmative action set forth below, designed and found necessary to effectuate the policies of the Act.

Having found that Respondent interfered with, coerced and restrained its employees in the exercise of rights guaranteed by Section 7 of the Act; discriminatorily discharged and transferred employees; and refused to bargain with the Union as the duly designated collective-bargaining representative of its employees in an appropriate unit, I conclude from the totality of that conduct that Respondent should be required to cease and desist from in any manner interfering with, restraining or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act. N.L.R.B. v. Entwistle Mfg. Co., 120 F. 2d 532 (C.A. 4); California Lingerie, Inc., 129 NLRB 912, 915.

Having additionally found that Respondent discriminatorily discharged Ronald Bakowski, Thomas Cappelo, James P. Ball, Douglas

Foreman, Larry Paranzino, Arnold McGonigle, Andrew Halliday, William Messenger, Robert Corrigan, Richard Furis, Robert Belesky and Michael Sarver, and thereafter failed and refused to reinstate them, and discriminatorily transferred George Macko, it will be recommended that Respondent be required to offer each of them, severally, immediate, full and unconditional reinstatement to the job such employee held at that time of his termination, or in the case of George Macko, to the job he held just prior to his transfer, without prejudice to the seniority, or other rights, privileges, or working conditions previously enjoyed, and to severally make each of them whole for any loss of earnings suffered, by paying to each a sum of money equal to the amount he would have earned from the date of his termination, or in the case if George Macko, the date of his transfer, to the date of Respondent's offer of reinstatement, less any amount he may have earned as wages in that period. Such backpay shall be computed in accordance with the formula set forth in F. W. Woolworth Company, 90 NLRB 289, and shall bear interest at the rate of 6 percent per annum, as provided in Isis Plumbing & Heating Co., 138 NLRB 716.

Additionally, it will be recommedned that Respondent be required to preserve, and upon request make available to authorized agents of the Board, all records necessary or useful in determining compliance with the Board's Order, or in computing the amount of backpay due.

Having also found that on August 29, and at all times thereafter, Respondent failed and refused, in violation of Section 8(a)(5) and (1) of the Act, to recognize and bargain with the Union as the duly designated exclusive collective-bargaining representative of its employees in an appropriate unit, and that independent of such violation, a bargaining order is necessary to prevent Respondent from reaping the benefits of its own unlawful conduct, it will be recommended that Respondent, be ordered, upon request, to recognize and bargain with the Union as such representative, concerning the wages, hours and terms and conditions of employment of the employees in the aforesaid unit, and if an understanding is reached embody the same into a signed contract.

Upon the foregoing findings of fact, conclusions of law and the entire record in the case, and pursuant to Section 10(c) of the Act, I hereby issue the following recommended: 50/

50/ In the event no exceptions are filed as provided by Section 102.46 of the Rules and Regulations of the National Labor Relations Board, the findings, conclusions, and recommended Order herein shall, as provided in Section 102.48 of the Rules and Regulations, be adopted by the Board and become its findings, conclusions, and Order and all objections thereto shall be deemed waived for all purposes.

ORDER

Respondents, The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, and The Florsheim Shoe Store Company of Monroeville, Pennsylvania, its officers, agents, successors, and assigns shall:

1. Cease and desist from:

(a) Coercively interrogating employees with respect to their sympathies for or assistance to any labor organization.

(b) Threatening to discharge or otherwise discriminate against employees because they assist or support a labor organization.

(c) Encouraging or discouraging membership in Retail Store Employees Union Local 1407, as chartered by Retail Clerks International Association, AFL-CIO, or any other labor organization of its employees, by discriminatorily discharging, transferring, or in any other manner discriminating against any employee in regard to his hire, tenure, or any other term or condition of employment.

(d) Refusing, on request, to recognize and bargain collectively with the aforesaid labor organization as the exclusive collective-bargaining representative of its employees in an appropriate unit composed of all full-time and regular part-time selling and non-selling employees at their retail shoe store at 200 Fifth Avenue, 501 Smithfield Street, Northway Center Mall, South Hills Village Shopping Center, and Monroeville Mall, excluding office clerical employees and guards, professional employees and supervisors, as defined in the Act.

(e) In any other manner interfering with, restraining or coercing employees in the exercise of their rights to self-organization, to form, join or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in other concerted activities for the purpose of collective bargaining or other mutual aid or protection, or to refrain from any and all such activities.

2. Take the following affirmative action found necessary and designed to effectuate the policies of the Act:

(a) Upon request, recognize and bargain collectively with the aforesaid labor organization as the exclusive collective-bargaining representative of the employees in the aforesaid appropriate unit, with respect to rates of pay, wages, hours and other terms and conditions of employment, and if an understanding is reached embody the same into a signed written agreement.

(b) Offer immediate, full and unconditional reinstatement to Ronald Bakowski, Thomas Cappelo, James P. Ball, Douglas Foreman, Larry Paranzino, Arnold McGonigle, Andrew Halliday, William Messenger, Robert Corrigan, Richard Furis, Robert Belesky, Michael Sarver and George Macko to the job said employees, severally, held prior to the discrimination against them, without prejudice to their seniority or other rights and privileges, and make each of them whole for any loss of earnings they may have severally suffered, in the manner set forth in the section hereof entitled "The Remedy."

(c) Preserve, and upon request make available to authorized agents of the National Labor Relations Board, for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary or useful in determining compliance with this Order, or in computing the amount of backpay due.

(d) Post at each of their retail stores in the Pittsburgh, Pennsylvania metropolitan area, copies of the attached notice marked "Appendix B." 51/ Copies of said notice, on forms provided by the Board's Regional Director, Region 6 (Pittsburgh, Pennsylvania) shall, after being signed by an authorized representative, be posted as herein provided immediately upon receipt thereof, and be so maintained for a period of sixty (60) consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken to insure that said notices are not altered, defaced or covered by any other material.

(e) Notify the aforesaid Regional Director, in writing, within 20 days from the date of receipt of this Decision, what steps have been taken to comply herewith.

Dated, Washington, D. C.

Joseph I Nachman

Joseph I. Nachman
Senior Administrative Law Judge

51/ In the event that the Board's Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD" shall be changed to read "POSTED PURSUANT TO A JUDGMENT OF THE UNITED STATES COURT OF APPEALS ENFORCING AN ORDER OF THE NATIONAL LABOR RELATIONS BOARD."

APPENDIX A

Name	Store	Status*	Date of Card	Received by Union
J.G. Schneider	200 Fifth Ave.	F.T.	8/13	8/27
A. McGonigle	" " "	P.T.	8/25	8/27
J. P. Ball	" " "	P.T.	8/13	8/27
W.G. Flaherty	501 Smithfield	F.T.	Did not sign	
D. Foreman	" "	P.T.	8/28	9/2
L. Paranzino	" "	P.T.	8/28	9/2
L. Scott	" "	P.T.	8/13	8/27
R.J. Bakowski	" "	F.T.	8/25	8/27
G. Koritsky	Northway Mall	F.T.	8/27	8/28
R.L. Corrigan	" "	P.T.	8/27	8/28
R.D. Furis	" "	P.T.	Did not sign	
W.G. Messenger	" "	P.T.	8/27	8/28
A.J. Halliday	" "	P.T.	8/27	8/28
T.D. O'Neil	South Hills	F.T.	8/28	9/2
M.J. Kelly	" "	* *		
R.A. Jeffreys	" "	* *		
J.G. Bittner	" "	* *		
R.M. Belesky	Monroeville Mall	P.T.	3/26	3/26
G. Macko	" "	F.T.	3/26	3/26
J.L. Osselburn	" "	F.T.	3/26	3/26
M.T. Sarver	" "	P.T.	8/6	8/11
T.A. Cappello	" "	P.T.	3/29	4/7

*F.T. indicates full-time and P.T. indicates part-time.

**There is no evidence as to the status of these three employees. However, as all part-time employees were terminated in mid-September, and the complaint alleges such terminations to have been for discriminatory reasons which does not include the names of these employees, I assume they were full-time.

APPENDIX B

FORM NLRB-4727
(9-69)

NOTICE TO EMPLOYEES

POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD

AN AGENCY OF THE UNITED STATES GOVERNMENT

AFTER A FULL TRIAL IN WHICH ALL SIDES HAD THE OPPORTUNITY TO PRESENT THEIR EVIDENCE, THE NATIONAL LABOR RELATIONS BOARD HAS FOUND THAT WE, FLORSHEIM SHOE STORES, VIOLATED THE NATIONAL LABOR RELATIONS ACT, AND HAS ORDERED US TO POST THIS NOTICE. WE WILL CARRY OUT THE ORDER OF THE BOARD, THE JUDGMENT OF ANY COURT ENFORCING THE SAME, AND PARTICULAR THE FOLLOWING:

The Act gives all employees these rights:

To organize themselves
To form, join or help unions
To bargain collectively through representatives of their own choosing
To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
To refuse to do any or all these things.

WE WILL NOT do anything to interfere with you in the exercise of the aforementioned rights, and all our employees are free to become or remain a member of Retail Clerks Local 1407, or not to become or remain a member of that or any other union.

WE WILL NOT question you about your sympathies for or activities on behalf of Local 1407, or any other union.

WE WILL NOT question you as to whether or not you have signed a card for Local 1407, or any other union.

WE WILL NOT discharge, threaten to discharge, or transfer any employee because he has supported a union.

WE WILL, upon request, bargain collectively with Local 1407, as exclusive collective-bargaining representative of our employees in an appropriate unit composed of all full-time and regular part-time selling and nonselling employees at our retail shoe stores in the Pittsburgh, Pennsylvania, metropolitan area, excluding office clerical employees and guards, professional employees and supervisors, as defined in the Act, with respect to rates of pay, wages, hours and other terms and conditions of employment, and if an understanding is reached reduce the same to a signed written agreement.

As the National Labor Relations Board found that we violated the law by discharging Ronald Bakowski, Thomas Cappelo, James P. Ball, Douglas Foreman, Larry Paranzino, Arnold McGonigle, Andrew Halliday, William Messenger, Robert Corrigan, Richard Furis, Robert Belesky, and Michael Sarver, and by transferring George Macko, WE WILL offer each of them immediate, full and unconditional reinstatement to their former job, without loss in their seniority or other rights and privileges, and make up to each of them the pay they lost, together with 6 percent interest.

THE FLORSHEIM SHOE STORES COMPANY
OF PITTSBURGH, PENNSYLVANIA
(Employer)

Dated ________________ By ____________________
(Representative) (Title)

THE FLORSHEIM SHOE STORES COMPANY
OF MONROEVILLE, PENNSYLVANIA
(Employer)

Dated ________________ By ____________________
(Representative) (Title)

THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

This notice must remain posted for 60 consecutive days from the date of posting and must not be altered, defaced, or covered by any other material. Any questions concerning this notice or compliance with its provisions may be directed to the Board's Office, 10th Floor Porter Building, 601 Grant Street, Pittsburgh, Pennsylvania 15219 Telephone 412 644-2969.

Decision and Order of the National
Labor Relations Board

MFP

227 NLRB No. 166

D--1996
Pittsburgh, Pa.

UNITED STATES OF AMERICA

BEFORE THE NATIONAL LABOR RELATIONS BOARD

THE FLORSHEIM SHOE STORE COMPANY OF
PITTSBURGH, PENNSYLVANIA, AND THE
FLORSHEIM SHOE STORE COMPANY OF
MONROEVILLE, PENNSYLVANIA

and

Case 6--CA--8591

RETAIL STORE EMPLOYEES UNION LOCAL 1407
AS CHARTERED BY RETAIL CLERKS INTERNATIONAL
ASSOCIATION, AFL--CIO

DECISION AND ORDER

On September 22, 1976, Administrative Law Judge Joseph I. Nachman issued the attached Decision in this proceeding. Thereafter, Respondent filed exceptions and a supporting brief, and General Counsel filed a brief in support of the Administrative Law Judge's Decision.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,[1/]

[1/] The Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an Administrative Law Judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. Standard Dry Wall Products, Inc., 91 NLRB 544 (1950), enfd. 188 F.2d 362 (C.A. 3, 1951). We have carefully examined the record and find no basis for reversing his findings.

and conclusions[2] of the Administrative Law Judge and to adopt his recommended Order.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board adopts as its Order the recommended Order of the Administrative Law Judge and hereby orders that the Respondent, The Florsheim Shoe Store Company of Pittsburgh, Pennsylvania, and The Florsheim Shoe Store Company of Monroeville, Pennsylvania, its officers, agents, successors, and assigns, shall take the action set forth in the said recommended Order.

Dated, Washington, D.C. January 17, 1977

Betty Southard Murphy,	Chairman
John H. Fanning,	Member
John A. Penello,	Member

(SEAL)

NATIONAL LABOR RELATIONS BOARD

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[2] The Administrative Law Judge, although finding that Store Manager Holleran in mid-August before the Union's demand for recognition questioned employee Furis as to whether his fellow employee Koritsky had spoken to him about the Union, inadvertently failed to make any findings as to whether this conduct was unlawful. We find that Holleran's questioning of Furis constituted a coercive interrogation in violation of Sec. 8(a)(1). No modification of the remedy and order is required by this additional finding. Trading Port, Inc. 219 NLRB 298 (1975) (Member Fanning concurring).

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38